

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
Mirant Corporation's ) 00-AFC-4  
POTRERO POWER PLANT UNIT 7 )  
PROJECT )  
\_\_\_\_\_ )

MONDAY, OCTOBER 28, 2002

10:25 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

William Keese, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Stanley J. Valkosky, Hearing Officer

Michael Smith, Advisor

STAFF PRESENT

Dick Ratliff, Senior Staff Counsel

William J. Westerfield, Staff Counsel

Marc S. Pryor, Project Manager

Mark Hesters

James C. Henneforth  
Pacific Group Electric Power

PUBLIC ADVISER

Roberta Mendonca

REPRESENTING THE APPLICANT

Michael J. Carroll, Attorney  
Latham and Watkins

Mark Harrer, Project Director  
Jim Shandalove  
Robert Jenkins  
Valorie Zambito, Director, Technical Support  
Mirant Americas Development, Inc.

Dale D. Shileikis, Project Manager  
Kelly Haggerty  
URS Corporation

Marcus Young  
Singer and Associates

INTERVENORS

William B. Rostov, Attorney  
Mike Thomas, Organizer  
Communities for a Better Environment

Jacqueline Minor, Deputy City Attorney  
Andria Pomponi, Camp, Dresser and McKee  
City and County of San Francisco

Alan Ramo, Director  
Our Children's Earth  
Southeast Alliance for Environmental Justice  
Environmental Law and Justice Clinic of  
Golden Gate University School of Law

Jody S. London, Attorney  
Gruenich Resource Advocates  
Neighboring Property Owners Coalition

ALSO PRESENT

Michael Strausz

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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## P R O C E E D I N G S

10:25 a.m.

PRESIDING MEMBER PERNELL: Good morning.

This is a continuation of the application for certification for the Potrero Power Plant Unit 7. My name is Commissioner Robert Pernel; I'm the Presiding Member. To my right is Stan Valkosky; he's the Hearing Officer. And to his right is Chairman Keese; he is the Associate Member of the Committee. And Chairman Keese's Advisor, Mr. Smith, will be in shortly.

At this time I'd like to turn the hearing over to our Hearing Officer, Mr. Valkosky.

HEARING OFFICER VALKOSKY: Thank you, Commissioner Pernel. Before we begin I'd like the parties to introduce themselves. On behalf of the applicant?

MR. CARROLL: Thank you, good morning. Mike Carroll with Latham and Watkins, on behalf of the applicant. And I have here with me today to my immediate left Robert Jenkins of Mirant; also with us is Valorie Zambito of Mirant, who will be witnesses today.

In addition to those two witnesses we have Mark Harrer and Jim Shandalove from Mirant.

1 And Kelly Haggerty, Dale Shileikis and Marcus  
2 Young, who are consultants to the applicant.

3 HEARING OFFICER VALKOSKY: Thank you,  
4 Mr. Carroll. Staff?

5 MR. WESTERFIELD: Thank you, good  
6 morning. My name is William Westerfield. I am an  
7 attorney with the California Energy Commission.  
8 I'm representing staff here today. And we are  
9 presenting two witnesses on two topic areas. To  
10 my left is Mark Hesters, who will be presenting  
11 testimony on transmission system engineering; I  
12 also have here today Mr. Jim Henneforth, who will  
13 be presenting testimony on power plant efficiency.

14 Also with us today is the Project  
15 Manager, Marc Pryor. And also Dick Ratliff, my  
16 colleague.

17 HEARING OFFICER VALKOSKY: Thank you.  
18 On behalf of the City and County?

19 MS. MINOR: Good morning, Jackie Minor,  
20 representing the City Attorney's Office, on behalf  
21 of the City and County of San Francisco.

22 With me today is Andria Pomponi, Project  
23 Manager from Camp, Dresser and McKee, that  
24 supports the City's efforts.

25 HEARING OFFICER VALKOSKY: Southeast

1 Alliance.

2 MR. RAMO: Good morning; my name is Alan  
3 Ramo and I represent Our Children's Earth and the  
4 Southeast Alliance for Environmental Justice.

5 HEARING OFFICER VALKOSKY: Communities.

6 MR. ROSTOV: Good morning; my name is  
7 William Rostov. I represent Communities for a  
8 Better Environment. With me is Mike Thomas, who  
9 is an Organizer for Communities for a Better  
10 Environment.

11 HEARING OFFICER VALKOSKY: Thank you.  
12 The Committee noticed today's hearings and  
13 hearings for tomorrow, and if necessary, on  
14 Wednesday. That notice of order issued on August  
15 13th of this year. The document also contained  
16 filing dates for testimony.

17 On October 15th the Committee  
18 supplemented today's agenda by providing notice  
19 that we would also discuss the various motions to  
20 continue/suspend the proceedings.

21 In addition to the February 2002 staff  
22 assessment and the AFC document and its associated  
23 supplements, other filings pertinent to this set  
24 of hearings include applicant's prepared testimony  
25 filed September 15th; staff's supplemental



1 testimony on transmission system engineering and  
2 the testimony on reliability, California  
3 Independent System Operator, filed on October  
4 10th; the City and County's prepared testimony and  
5 exhibits on reliability filed on October 8th.

6 Our Children's Earth and Southeast  
7 Alliance for Environmental Justice request for  
8 official notice filed October 10 and 11; and the  
9 various motions for continuation/suspension and  
10 applicant's response thereto.

11 The purposes of these formal evidentiary  
12 hearings is to establish the factual record  
13 necessary to reach a decision in this case. This  
14 is done through the taking of written and oral  
15 testimony, as well as exhibits from the parties.

16 We will follow a format similar to that  
17 of the previous hearings in June and July in this  
18 session.

19 In addition, we will discuss and hear  
20 argument on the various motions to be continued or  
21 suspended. Preferably at the conclusion of  
22 today's evidentiary presentations, if this is not  
23 possible for some reason, we'll entertain the  
24 matter tomorrow after conclusion of the  
25 evidentiary presentation on reliability. SAEJ's

1 request for official notice will be discussed  
2 tomorrow also at the beginning of the reliability  
3 topic.

4 Are there any questions, comments?

5 Okay, with that, we'll commence with the agenda.

6 The first topic is the continuation of the  
7 transmission system engineering, specifically  
8 regarding the switchyard amendment. Mr. Carroll.

9 MR. CARROLL: Thank you. At this time  
10 the applicant recalls Robert Jenkins in the area  
11 of transmission system engineering. And ask that  
12 the witness be sworn, please.

13 Whereupon,

14 ROBERT JENKINS

15 was recalled as a witness herein, and after first  
16 having been duly sworn, was examined and testified  
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. CARROLL:

20 Q Would you please state your name, title  
21 and your role with respect to the project.

22 A Yes, my name is Robert Jenkins. I'm  
23 Technical Support Principal and responsible for  
24 transmission interconnection design, amongst other  
25 things.

1           Q     And are you the same Robert Jenkins that  
2     submitted prepared testimony in this proceeding  
3     which has now been identified as exhibit 17, and  
4     which was entered into evidence on June 25, 2002?

5           A     Yes.

6           Q     And did you also provide testimony at  
7     the evidentiary hearing on June 25, 2002,  
8     regarding transmission system engineering?

9           A     Yes.

10          Q     Did you assist in the preparation of an  
11     amendment to the application for certification  
12     modifying the transmission interconnection which  
13     was docketed on July 17, 2002, CEC Docket 26289?

14          A     Yes.

15          Q     And by virtue of your participation in  
16     the preparation of that document, which I'll refer  
17     to as the switchyard amendment, are you familiar  
18     with its contents?

19          A     Yes.

20          Q     Is the transmission interconnection  
21     described in the switchyard amendments the same as  
22     that which was evaluated by PG&E in its final  
23     system impact facility study which was also  
24     included as part of exhibit 17 and entered into  
25     evidence on June 25, 2002?

1           A     Yes.

2           Q     And is the transmission interconnection  
3           described in the switchyard amendment the same as  
4           that upon which you based your previous testimony  
5           in this matter?

6           A     Yes.

7           Q     Can you briefly describe for us the  
8           transmission interconnection as reflected in the  
9           switchyard amendment and how it differs from the  
10          original proposal presented in the AFC?

11          A     The original proposal included in the  
12          AFC was a 10 breaker ring buss that would normally  
13          be operated in a split configuration. This split  
14          configuration will result in the output of  
15          combustion turbine generator 7B and steam turbine  
16          generator being directed to Hunter's Point  
17          switchyard over the two new cables.

18                 The output of the other combustion  
19          turbine, combustion turbine generator 7A, and the  
20          existing Potrero generation would be directed to  
21          the Potrero switchyard to breakers currently used  
22          for the interconnection of existing Potrero  
23          generation.

24                 The modified or changed switchyard  
25          configuration, as identified in the switchyard

1 amendment, proposes to eliminate the 10 breaker  
2 ring buss entirely. The new Potrero generation,  
3 as well as the 115 kV cable interconnections would  
4 be taken directly into the PG&G switchyard.

5 Q What are the primary advantages of the  
6 current proposal relative to the original  
7 proposal?

8 A There are several advantages. First, it  
9 eliminates the need for a third 115 kV cable in  
10 the City that would be needed to satisfy PG&E's  
11 grid reliability.

12 It also allows the installation of buss  
13 sectionalizing breakers at Potrero to improve the  
14 reliability of power delivery in the City.

15 It eliminates the California ISO concern  
16 over the control of the Potrero Plant substation,  
17 and whether this switchyard should be part of the  
18 ISO-controlled grid.

19 It reduces the number of breakers that  
20 are needed to install the Potrero interconnection.  
21 And finally, it reduces the potential need for a  
22 runback for curtailment of Potrero 7 generation  
23 for the loss of one of the new 115 kV cables  
24 between Hunter's Point and Potrero.

25 Q Are there advantages to the current

1 proposal relative to the original proposal with  
2 respect to project reliability?

3 A Yes. Generally it is industry practice  
4 to try to avoid, if possible, large ring busses.  
5 A large ring buss is generally considered a ring  
6 buss with over six line terminations.

7 And these large ring busses are  
8 difficult to manage from a break maintenance and  
9 breaker failure aspect. Therefore, usually once a  
10 ring buss gets above six positions, the switchyard  
11 is redesigned to a breaker and a half arrangement.

12 However, this isn't possible at the  
13 Potrero site because of insufficient space to  
14 effectively make such a design change. However,  
15 this concern is eliminated with the proposed  
16 redesign of the interconnection whereby the ring  
17 buss is removed.

18 Additionally, interconnecting each unit  
19 at the PG&E Potrero switchyard allows PG&E to  
20 install buss sectionalizing breakers to improve  
21 the reliability to San Francisco customers.

22 As part of the Potrero interconnection a  
23 buss parallel breaker will also be installed on  
24 buss section E through the use of the buss  
25 sectionalizing breakers and parallel breakers,

1 failure of any buss section will likely result in  
2 the loss of only one, possibly two, generators.  
3 Without these additions, two or three generator  
4 connections would be lost in the event of a buss  
5 fault, as well as twice as many 115 kV  
6 transmission cables.

7 This results in a substantial  
8 improvement to the reliability of the Potrero  
9 switchyard.

10 Finally, the new arrangement allows for  
11 improved reliability with less transmission  
12 investment. And then the installation of a third  
13 Hunter's Point/Potrero 115 kV cable is avoided.

14 Q Thank you. Does that complete your  
15 testimony today?

16 A Yes.

17 MR. CARROLL: Robert Jenkins is now  
18 tendered for cross-examination with respect to the  
19 switchyard.

20 HEARING OFFICER VALKOSKY: I have a  
21 couple points of clarification, Mr. Jenkins. In  
22 your exhibit 50, the switchyard amendment, there's  
23 a mention of transmission service agreements,  
24 discussions among Mirant, PG&E and Hetch-Hetchy.  
25 Is there any update, or has any progress been made

1 on those agreements?

2 MR. JENKINS: We have been meeting  
3 regularly with PG&E and Hetch-Hetchy on the  
4 installation of the two 115 kV cables. There is  
5 progress being made in the negotiation of those  
6 arrangements, though we have -- are making our  
7 request directly to PG&E for PG&E to provide the  
8 service under their open access transmission  
9 tariff.

10 So the nature of the negotiations have  
11 changed somewhat in that PG&E is the primary party  
12 negotiating with the City and County of San  
13 Francisco, or with Hetch-Hetchy. And Mirant is  
14 negotiating with PG&E.

15 There has been some movement back and  
16 forth as to what role PG&E would have versus  
17 Hetch-Hetchy. Our last meeting had a slight  
18 change in that, but we expect it to solidify  
19 fairly quickly here because of schedule needs of  
20 both PG&E and the City.

21 HEARING OFFICER VALKOSKY: Speaking of  
22 schedule needs, is there any anticipated end date  
23 for these negotiations?

24 MR. JENKINS: Both Hetch-Hetchy and PG&E  
25 need to have some sort of commitment by the end of



1 the year, it's our understanding, in order to meet  
2 their schedule. Their schedule requires the  
3 cable, at least one cable to be installed by 2004.

4 And our project does not need the cables  
5 installed until the project comes fully online.  
6 So their schedule is the driving schedule, if you  
7 will. They've indicated they need to make  
8 decisions by the end of the year.

9 HEARING OFFICER VALKOSKY: Last  
10 question. Your exhibit 50 contains a sensitivity  
11 study. Could you just explain for my own  
12 education how this sensitivity study interrelates  
13 with the previous facility study that's referred  
14 to in exhibit 17?

15 MR. JENKINS: The previous facility  
16 study did not have the Hetch-Hetchy substation  
17 modeled in the transmission analysis. This is a  
18 new substation being proposed by Hetch-Hetchy to  
19 serve port loads, among other loads.

20 So the question was raised, well, what  
21 impact does this station have. And the  
22 sensitivity study found that it generally has a  
23 favorable impact, such that the more load you  
24 consume locally right there in the vicinity of the  
25 power plant, the less that has to be exported away

1 from the power plant. So that generally lowers  
2 the transmission loading.

3 So, by assuming some Hetch-Hetchy load  
4 you end up with a more favorable result. The  
5 initial studies with no Hetch-Hetchy load which  
6 would be the most conservative result.

7 HEARING OFFICER VALKOSKY: Mr.  
8 Westerfield.

9 MR. WESTERFIELD: The staff has no  
10 questions.

11 HEARING OFFICER VALKOSKY: Ms. Minor.

12 MS. MINOR: Good morning, Mr. Jenkins.  
13 The City has no questions at this time. We would,  
14 however, like to reserve the right to recall Mr.  
15 Jenkins just to clarify, at some future day, the  
16 status of the transmission project between PG&E,  
17 Hetch-Hetchy and Mirant, if that's --

18 HEARING OFFICER VALKOSKY: Mr. Carroll.

19 MR. CARROLL: We would have no objection  
20 to that.

21 HEARING OFFICER VALKOSKY: Okay.

22 MS. MINOR: Thank you.

23 HEARING OFFICER VALKOSKY: Mr. Ramo.

24 CROSS-EXAMINATION

25 BY MR. RAMO:

1           Q     I have some questions about exhibit 15,  
2     the switchyard amendment. One of the things you  
3     were asked to do by the staff was to evaluate the  
4     impact of having Hunter's Point operating at the  
5     same time that unit 7 is in operation, is that  
6     correct?

7           A     Yes.

8           Q     Was there any impact that you found from  
9     having Hunter's Point still in operation?

10          A     The impact I found was that the  
11     transmission system, as proposed, would not be  
12     able to accommodate the full output of Potrero  
13     Power Plant existing units plus the Potrero 7 plus  
14     all the units at Hunter's Point.

15                 There are cases where some of the gas  
16     turbines -- there would not be room for some  
17     existing gas turbines --

18          Q     Would it be fair to say that table 3 of  
19     your amendments summarizes the maximum generation  
20     of each unit under different contingencies?

21          A     Yes.

22          Q     Let me ask you a few questions about  
23     that table 3. And first of all I want to turn  
24     your attention to, if I understand the  
25     abbreviations, the case of contingency two.

1 A Yes.

2 Q Do you have that before you?

3 A Table 3 I have before me, yes.

4 Q Yeah. And for contingency 2 there's a  
5 column called other, which has the words  
6 alternative is to lower Hunter's Point Power Plant  
7 4 by 5 megawatts rather than trip Hunter's Point  
8 Power Plant 4. Do you see those words?

9 A Yes.

10 Q Should the second reference to Hunter's  
11 Point Power Plant 4 actually be one?

12 A Yes, you are correct, it should be 1.

13 Q And isn't that also true for contingency  
14 9?

15 A The verbiage is a little bit different,  
16 but the intent is the same, yes. That rather than  
17 tripping unit 1, you could lower Hunter's Point 4  
18 by a small amount.

19 Q So to just explain a little bit further,  
20 under this contingency the analysis showed that by  
21 taking off Hunter's Point Power Plant 1, as well  
22 as the peakers at Potrero, one could avoid a  
23 transmission overload, is that correct?

24 A Yes.

25 Q Now at this point, this is a proposed

1 analysis of how one could address transmission  
2 overloads, is that correct?

3 A This is one possibility of managing the  
4 transmission capacity in the event of request for  
5 generation by existing Potrero, new Potrero,  
6 existing Hunter's Point all simultaneously.

7 Q Are these the only ways this could be  
8 managed?

9 A No.

10 Q At the current moment there's nothing,  
11 to your knowledge, there's nothing from any  
12 regulatory agency that requires it to be managed  
13 in this way or the other ways, isn't that correct?

14 A We're getting -- there are some ISO  
15 proposals for intrazonal congestion management of  
16 ways to manage the facility. Following ISO  
17 protocol, intrazonal congestion would be one way  
18 to be the most likely way to manage it.

19 Q So in the case where we had all these  
20 facilities operating at the same time, would the  
21 ISO determine which units are being tripped? Or  
22 would the company determine which units are being  
23 tripped?

24 A The company would determine if they  
25 would allow their units to be tripped. The ISO

1 would work within those parameters. They would  
2 have one level of generation that would be allowed  
3 if tripping was a part of the program. And  
4 another level of generation that would be allowed  
5 if the companies were unwilling to allow their  
6 generation to be tripped.

7 Q Do you know whether the applicant would  
8 have a problem with a condition of certification  
9 that would require Mirant to adjust its power  
10 outflows based on this table?

11 A Mirant has indicated to PG&E and  
12 provided, I think, as part of to the CEC that we  
13 would be willing to trip our units for identified  
14 transmission outages, the units being Potrero 4,  
15 5, and 6, the combustion turbines, if required.  
16 So those are the units shown here that may have to  
17 be tripped for these contingencies.

18 Q Would you have any problem in the  
19 Commission conditioning certification that the  
20 adjustment of company operations should be  
21 consistent with producing air pollution coming  
22 from the units being operated?

23 MR. CARROLL: I'm going to object. I'm  
24 not sure I understand the question. I'd ask that  
25 it be rephrased or clarified.

1 HEARING OFFICER VALKOSKY: Try again,  
2 Mr. Ramo.

3 MR. RAMO: Okay.

4 BY MR. RAMO:

5 Q I gathered there's some choices here if  
6 there was a situation where there was a demand for  
7 electricity and all these units were operated to  
8 avoid overloads, is that correct?

9 A If all these units were attempted to  
10 operate there would need to be some way of  
11 managing the amount of generation to avoid  
12 overloads, correct.

13 Q And I take from your testimony that that  
14 management is partly requires participation by the  
15 company and partly decisions by the ISO. Is that  
16 a fair summary?

17 A Yes.

18 Q Now, some of these units are far more  
19 polluting than the other units, isn't that  
20 correct?

21 A I can't comment on that. I'm not  
22 familiar with the emissions of the units.

23 Q Would there be any -- so you don't know  
24 whether unit 7 is more efficient in terms of air  
25 pollution than the peakers that burn oil at the

1 facility?

2 A That would be my understanding is that  
3 Potrero 7 would have lower emissions. But as to  
4 the -- I'm not able to quantify that amount.

5 Q You don't know the relative amount  
6 between Hunter's Point 1 and Potrero 4, for  
7 example?

8 A No, I don't.

9 Q Do you know if the company would have a  
10 problem with a condition that would make  
11 environmental protection one factor in determining  
12 how to manage these overloads?

13 A I can't comment on how the company would  
14 respond to that because it doesn't -- I don't  
15 fully understand what sort of environmental  
16 management is being proposed.

17 The reason these units were selected in  
18 this table is based on the type of concerns or  
19 considerations that the combustion turbines, one,  
20 would be less likely to be operating with this  
21 level of generation, so the actual need to trip  
22 them would be much lower than any other of the  
23 units. And, two, engineering-wise the more able  
24 to accommodate such a trip and come back online if  
25 needed, fairly quickly.



1           So, those were the reasons these units  
2           were selected. As far as selecting other units  
3           for environmental reasons, that becomes a much  
4           more difficult question.

5           If you trip, say, a Potrero 3, the  
6           impact on the unit would be much greater than,  
7           say, one of the smaller combustion turbines. Its  
8           ability to return to service could be impacted, as  
9           well.

10          So that I don't have an answer to,  
11          whether we'd be willing to implement such a  
12          tripping as that.

13          Q     For example, contingency 8, you're  
14          tripping Potrero 5 and 6, but not 4. Is there a  
15          systems engineering reason for tripping those two  
16          as opposed to 4? Or was it just more a matter of  
17          we've got to trip two out of three?

18          A     This was showing that you had -- this  
19          was the minimum amount you had to trip. Actually,  
20          the way the interconnection is arranged, it would  
21          be likely that you would end up tripping all three  
22          of them. You might even have to over-trip.

23          Q     But there is no systems engineering  
24          reason for tripping 5 as opposed to 4, is there?

25          A     No.

1           Q     Is there a reason to trip 5 as opposed  
2     to Hunter's Point 1?

3           A     In general, I chose tripping the Mirant  
4     plants first, because of the plants, the ones that  
5     we can control. Hunter's Point 1 is controlled by  
6     PG&E.

7                     Also, it is a remote station, so if you  
8     have an outage of a cable connecting to Potrero,  
9     in order to trip Hunter's Point you have to  
10    establish communications, and it's a little more  
11    complicated.

12                    So preferably for outages out of Potrero  
13    switchyard, you would trip Potrero generating  
14    units.

15          Q     One last question. Do you know whether  
16    in the case of this kind of overload, whether  
17    Mirant would be able to still bid its entire  
18    capacity to the ISO?

19          A     I'm not sufficiently familiar with the  
20    requirements on submitting bids to the ISO. At  
21    least in the baseline shows there's one plus  
22    turbine, 48 megawatts, if you would, that would  
23    not be able to generate simultaneously with  
24    everything at Hunter's Point, and I would think us  
25    at Potrero.

1 But that's also -- those are RMR units,  
2 and subject to ISO dispatch. So I'm not sure how  
3 they're bid today.

4 Q Okay.

5 MR. RAMO: Thank you.

6 HEARING OFFICER VALKOSKY: Mr. Rostov.

7 MR. ROSTOV: I don't have any questions.

8 HEARING OFFICER VALKOSKY: Any redirect?

9 MR. CARROLL: No redirect.

10 HEARING OFFICER VALKOSKY: Anything else  
11 for Mr. Jenkins?

12 Thank you, Mr. Jenkins, you're excused,  
13 subject to being recalled by the City and County  
14 of San Francisco concerning the limited question  
15 of the status of negotiations we discussed. Thank  
16 you.

17 Mr. Carroll.

18 MR. CARROLL: At this time we would ask  
19 that exhibit 50 be admitted into the evidentiary  
20 record.

21 HEARING OFFICER VALKOSKY: Is there any  
22 objection?

23 MR. WESTERFIELD: No objection.

24 MS. MINOR: No objection.

25 MR. RAMO: Subject to the witness'

1 testimony, correcting the errors pointed out.

2 HEARING OFFICER VALKOSKY: Correct, the  
3 corrections identified by the witness would be  
4 included in --

5 MR. RAMO: No objection.

6 HEARING OFFICER VALKOSKY: -- exhibit  
7 50. Okay, hearing no objection, exhibit 50 is  
8 admitted.

9 Mr. Westerfield.

10 MR. WESTERFIELD: Yes, at this time we'd  
11 like to call Mark Hesters to present the testimony  
12 on behalf of staff on TSE.

13 HEARING OFFICER VALKOSKY: Swear the  
14 witness, please.

15 Whereupon,

16 MARK HESTERS

17 was called as a witness herein, and after first  
18 having been duly sworn, was examined and testified  
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. WESTERFIELD:

22 Q Mr. Hesters, what's your position with  
23 the Energy Commission?

24 A I'm an Associate Electrical Engineer; I  
25 prepared the transmission system engineering

1 testimony for this project.

2 Q Okay, and did you also prepare the  
3 staff's supplemental testimony on TSE marked  
4 exhibit 51?

5 A I did.

6 Q And do you swear that testimony's true  
7 and accurate to the best of your knowledge?

8 A Yes.

9 Q And could you summarize or explain why  
10 the staff submitted this testimony?

11 A We wanted to provide a -- summary of our  
12 response to the -- I always forget the title of  
13 this -- the switchyard amendment presented by the  
14 applicant.

15 And basically, in looking at the  
16 applicant's testimony, they answered all the  
17 concerns that we had had at the June 25th  
18 hearings, it was either the 25th or the 24th.

19 Our major concerns were one, that the  
20 switchyard hadn't been, or the change to the  
21 switchyard hadn't been adequately described. That  
22 was taken care of.

23 The other concern was that the  
24 interconnection study that was -- or the system  
25 impact study that was brought up in those hearings

1 identified overloads, emergency overloads within  
2 San Francisco, and that those had alternatives for  
3 mitigation, some of which were special protection  
4 systems; the others were -- and the alternative to  
5 that was either in one case, replacing soil. In  
6 the other case upgrading transmission lines.

7 And we were asking for the applicant to  
8 commit to the special protection systems, because  
9 those don't require downstream facilities. And in  
10 their switchyard amendment the applicant committed  
11 to the special protection systems. And we feel  
12 everything's been covered.

13 Q So is the staff satisfied at this point  
14 with the applicant's submissions vis-a-vis the  
15 concerns you expressed earlier?

16 A Yes.

17 MR. WESTERFIELD: That's all the  
18 questions I have.

19 HEARING OFFICER VALKOSKY: Mr. Hesters,  
20 referring to exhibit 50, the switchyard amendment,  
21 in the response to data request 6, applicant  
22 indicates that no changes are needed to the  
23 existing analyses except for visual resources.

24 Do you agree with that assessment?

25 MR. HESTERS: Are you talking about

1 other disciplines, or just --

2 HEARING OFFICER VALKOSKY: I'm asking  
3 you if -- I refer you to page 6 of the data  
4 request -- to response to the data request --

5 MR. HESTERS: I haven't seen the  
6 responses by other Commission Staff, but from what  
7 I understood nobody had any other issues. Visual  
8 might have.

9 HEARING OFFICER VALKOSKY: Okay, but you  
10 know of no reason to question that other than for  
11 visual, then?

12 MR. HESTERS: No.

13 HEARING OFFICER VALKOSKY: Thank you.  
14 Mr. Carroll.

15 MR. CARROLL: No questions.

16 HEARING OFFICER VALKOSKY: Ms. Minor.

17 MS. MINOR: No questions for Mr.  
18 Hesters.

19 HEARING OFFICER VALKOSKY: Mr. Ramo.

20 MR. RAMO: I'll try to make this brief.

21 CROSS-EXAMINATION

22 BY MR. RAMO:

23 Q Mr. Hesters, you were here when I was  
24 //  
25 //

1       doing my examination of Mr. Jenkins, correct?

2           A       Yes.

3           Q       And I'd like to focus these questions  
4       just on that period of time, that hypothetical  
5       period of time if unit 7 goes into operation and  
6       Hunter's Point is still kept in operation. So my  
7       questions will be directed to that period.

8           A       Okay.

9           Q       Do you agree that right now there's  
10       nothing from any regulatory agency that would  
11       pinpoint exactly how those kinds of transmission  
12       overloads would be managed?

13          A       We're talking about the overloads with  
14       Hunter's Point and Potrero operating?

15          Q       Yes.

16          A       Nothing specific because that small  
17       period of time hasn't been studied extensively,  
18       though it will be.

19          Q       So currently there's no specific ISO  
20       protocol that says here is how we would manage  
21       unit 7 and Hunter's Point if they were both  
22       operating together?

23          A       Congestion management protocol would be  
24       applied, but that's been in some kind of flux, so.

25          Q       And there's no must-run contract



1 currently in place between the ISO and Mirant for  
2 unit 7, is that correct?

3 A Not that I'm aware of.

4 Q From a staff perspective, would you have  
5 a problem in conditioning certification on a  
6 requirement that the applicant agree to be  
7 directed by the ISO in managing any overloads  
8 resulting from all these units being in operation  
9 at the same time?

10 MR. WESTERFIELD: Do you understand the  
11 question?

12 MR. HESTERS: Yeah, I do to some --  
13 let's see. I mean to some extent the ISO does  
14 manage that through the congestion management, its  
15 own existing congestion management proceedings.

16 Would we condition something -- could we  
17 condition something beyond that, I don't know.  
18 I'd have to run that through our legal staff and  
19 whether or not we can actually put that kind of  
20 condition on it.

21 BY MR. RAMO:

22 Q Putting aside whether there's the legal  
23 issue, in terms of your expertise in evaluating  
24 grid operations and transmission system  
25 engineering, would there be any problem from that

1 perspective in terms of requiring the applicant to  
2 comply with management by the ISO?

3 A No.

4 Q Would you have any problem as a systems  
5 manager that as a condition of certification that  
6 management of all of these units, management of  
7 the Potrero units be made after considering the  
8 environmental impacts of the strategies for  
9 addressing the overloads?

10 A That would have to go through the ISO.  
11 It's their operations folks that would make that  
12 decision, and whether or not they can basically  
13 add another factor to an immensely complicated  
14 process. It would have to be their call. We'd  
15 have to run that through them.

16 Q Well, I gather from table 3 that the  
17 first units from a systems management that would  
18 be tripped would be the most polluting units, the  
19 peakers, isn't that correct?

20 A Yeah, but that's beyond -- I mean that  
21 wasn't identified because, as Robert Jenkins  
22 discussed earlier, that was mostly applied because  
23 they're easy to restart if you need them; and  
24 they're under Mirant's control, so he looked at  
25 those first and said, well, we have direct control

1 over these. They have a must-run contract, but  
2 they have direct control over those units. And  
3 looked at those first.

4 That they happened to be the most  
5 polluting is a secondary effect. But they were --  
6 I mean, in my opinion, they'd be the most likely  
7 ones turned off in order to -- yeah, they'd be the  
8 most likely ones turned off in order to avoid  
9 congestion.

10 Q So based on your best analysis today  
11 that's been presented to you by the company and  
12 whatever other sources, bringing in the factor of  
13 the environment would not interfere with proper  
14 management of these loads, is that correct?

15 A In my best judgment, those two seem to  
16 coincide without a requirement that they coincide.

17 Q To the degree that the company has some  
18 discretion and choice here, would you have a  
19 problem in requiring that the company's discretion  
20 consider environmental impacts of their strategy  
21 for addressing the overloads?

22 A Again, never having looked at placing  
23 this kind of condition, or requesting this kind of  
24 condition, I'd still have to go through our legal  
25 staff and see if we could do that.

1           Q     But just from, again, within your area  
2     of expertise, is there any engineering standpoint  
3     why to the extent they have discretion in how they  
4     manage an overload, that they do so in accordance  
5     with environmental protection?

6           A     I don't see a transmission system  
7     engineering issue with that.

8           Q     Okay, thank you.

9           HEARING OFFICER VALKOSKY:  Mr. Rostov,  
10    do you have any questions?

11          MR. ROSTOV:  Yeah, I just have a very  
12    few.

13                   CROSS-EXAMINATION

14    BY MR. ROSTOV:

15          Q     First, I'm not sure if I understood  
16    something you said when you were talking, when the  
17    discussion was about Hunter's Point operating at  
18    the same time as Potrero unit 7, you said it had  
19    not been studied -- but it will be in the future.  
20    Can you explain that a little more?

21          A     Well, we're talking about what everybody  
22    hopes is a very small period of time.  The shorter  
23    period of time the two plants are operating  
24    together, I think the better for everybody.

25          So, when it gets closer to the time that

1 it looks like there's this period, there will be  
2 operating -- I mean, the congestion management is  
3 one way to deal with the overloads. Special  
4 protection systems are another way to deal with  
5 the overloads.

6 We know the mechanisms are in place.

7 And we -- just looking at the table the mechanisms  
8 are fairly simple. They're basically turning off  
9 the combustion turbines, and you don't even have  
10 to go beyond that.

11 Does that --

12 Q Well, I'm trying to figure out, there is  
13 a sensitivity study done that you're saying  
14 there's going to be more studies in the future, so  
15 I'm trying to figure out was the sensitivity study  
16 sufficient, or --

17 A The sensitivity study is an operations  
18 document; it's not a system impact study done by  
19 PG&E. The system impact study done by PG&E was  
20 done using what -- assuming that the Hunter's  
21 Point Power Plant was turned off, that's because  
22 that's what I expect, and what the applicant  
23 expects, and what PG&E -- the applicant at that  
24 point, expects to be the, what do I want to say,  
25 the primary operating system conditions when this

1 power plant is online, if it's online.

2 So, to spend a lot of time worrying  
3 about what we all hope is a short period of time,  
4 and extensively studying that doesn't make a lot  
5 of sense.

6 Q Isn't this a little different than what  
7 you were saying in June? I thought in June you  
8 were saying that we needed PG&E to do a facility  
9 study?

10 A Generally, I --

11 Q To analyze this situation. I'm trying  
12 to figure out what changed.

13 A What changed? The --

14 Q Well, first, were you saying something  
15 different in June?

16 A I was mostly saying that we needed a  
17 sensitivity study just to make sure this period of  
18 time wasn't -- just to make sure that if you had  
19 all these power plants running it didn't actually  
20 make the system worse. And it doesn't look like  
21 it makes the system worse. It looks like there's  
22 easy operating procedures.

23 When system impact studies are done, you  
24 don't do them under a whole -- you don't do  
25 extensive studies under a whole series of

1 assumptions. You want to make the best guess.

2 And a lot of times those assumptions change from  
3 the time that the study is done to the time we get  
4 to hearings here.

5 And to ask an applicant to redo a study  
6 every time something changes a power plant -- it  
7 was in the interconnection queue in front of them  
8 drops out. You know, that just adds this huge  
9 burden on an applicant and can delay something for  
10 years.

11 We don't do that. We go with what their  
12 best guess at the time the study was done. And  
13 that's what this was. And sometimes we ask for  
14 sensitivity studies just to look at, you know,  
15 what happens in the new system, in the changed  
16 system from when the study was done. And that's  
17 what this was. They're not extensive studies.

18 Q So you no longer think that a facility  
19 study needs to be done for that time period?

20 A You don't need a complete facility study  
21 for that time period.

22 Q And sorry, what factors changed between  
23 June 25th and now that makes you change your  
24 position essentially?

25 A I don't think I was requesting a full

1 facility study in June. I think I was requesting  
2 a sensitivity study, which is what I have now.

3 Q Okay. I want to ask you a couple of  
4 questions about your supplemental testimony. You  
5 have a line here that says overloads are not  
6 extensive and staff agrees with the study's  
7 conclusion that operating procedures could be used  
8 to mitigate the overloads until the Hunter's Point  
9 Power Plant is shut down.

10 What do you mean by operating  
11 procedures?

12 A That's basically not running the  
13 combustion turbines at the same time you're  
14 running Hunter's Point and the new plant.

15 Q So is that essentially the scenarios  
16 outlined in table 3?

17 A Yes.

18 Q And then the following sentence says:  
19 Because Mirant committed to using special  
20 protection systems to mitigate identified  
21 emergency overloads, no additional downstream  
22 transmission facilities will be required.

23 So, does this sentence mean that they've  
24 agreed to do what's in table 3, that Mirant has  
25 agreed?



1           A     That was actually things that came up in  
2     the interconnection study that was presented in  
3     June.  There were, I think, three or four  
4     different overloads that had, in the study done by  
5     PG&E, that had two options for mitigation.  One of  
6     them would be reconductoring; the other is special  
7     protection system.

8                 In one case there was a possible soil  
9     replacement and a special protection system.

10                Our concern is that if you do the  
11     reconductoring there are downstream impacts that  
12     need to be studied.  But when Mirant committed to  
13     the special protection scheme systems they say  
14     there aren't going to be downstream facilities; we  
15     are going to use these special protection schemes  
16     as mitigation.  And that's what that sentence  
17     refers to.

18           Q     So, it's two separate issues?

19           A     Yes.

20           Q     Okay.  Just for a second on the special  
21     protection systems, is that now a condition of  
22     certification that Mirant's agreed to because if I  
23     recall on June 25th they were saying they weren't  
24     sure if they could commit to these special  
25     protection systems?

1           A     No, I'm not questioning that. That's  
2     not usually something that we require or include  
3     in the condition. It could be a good thing to put  
4     in the condition, but we've never actually used  
5     that as a condition of certification.

6           Q     Do you think it would be a good thing in  
7     this case to put it in the conditions of  
8     certification?

9           A     Yes, it would be. Again, we have to  
10    check with the legal staff. I'm not sure we can  
11    require that.

12          Q     Okay. Then back to the -- since these  
13    were two different issues, just back to the  
14    operating procedures.

15          A     Um-hum.

16          Q     Has Mirant agreed to put in place these  
17    operating procedures? Is that going to be a  
18    condition of certification, as well, or --

19          A     You're talking now about the time when  
20    Hunter's Point is operating --

21          Q     Right.

22          A     -- with the --

23          Q     And I guess the scenario is laid out in  
24    table 3.

25          A     Basically that's a -- what we're looking

1 at in that table are times when congestion  
2 management, which is in a way an operating  
3 procedure, when you basically back down one plant  
4 or another in order to avoid a transmission  
5 overload.

6 Basically what that table identifies is  
7 possible ways to mitigate that transmission  
8 overload. At this point it's not a special  
9 protection system that's been identified.

10 Q So at this point it's just a theory of  
11 one way to deal with the situation?

12 A Yes.

13 Q But there's nothing, so to speak, in  
14 writing that would dictate how we're going to deal  
15 with the situation as the situation arises?

16 A Nothing beyond ISO congestion management  
17 protocols.

18 MR. ROSTOV: No further questions.

19 HEARING OFFICER VALKOSKY: Thank you.

20 CHAIRMAN KEESE: Mr. Hesters, recall  
21 stepping back to your conversation with Mr. Ramo,  
22 were you indicating that the ISO takes into  
23 consideration emissions from units?

24 MR. HESTERS: No.

25 CHAIRMAN KEESE: Were you indicating

1       that they take into consideration efficiency of  
2       units?

3               MR. HESTERS:  No.

4               CHAIRMAN KEESE:  Mr. Ramo, for a second,  
5       did you equate efficiency of units with pollution?  
6       I'm going to ask specifically, you indicated, I  
7       think, from your questioning that the peakers were  
8       more polluting than Hunter's Point.  Is that on  
9       the record at this time?

10              MR. RAMO:  I don't know if that's on the  
11       record.  My clients believe, based on other  
12       regulatory proceedings and matters, is that the  
13       peakers are far more polluting, far less efficient  
14       than the main generating units that are --

15              CHAIRMAN KEESE:  I would think if we  
16       talked about an old generating unit and an old  
17       peaker, that that is correct.

18              We know that what we're licensing now  
19       are 50 times cleaner than any of it.  And we know  
20       that some of the old diesel peakers were 1000.  
21       So, 500 times over what we're licensing today.

22              But when you're comparing an old unit  
23       and an old peaker, these are not -- you're  
24       suggesting these are not new peakers?

25              MR. RAMO:  That's right; that's my

1 understanding --

2 CHAIRMAN KEESE: These are not the new  
3 modern peakers --

4 MR. RAMO: -- they burn oil and --

5 CHAIRMAN KEESE: -- coming in under 10?

6 MR. RAMO: And what we're evaluating is  
7 whether to suggest that the Commission conditions  
8 which would give assurance to the community that  
9 if there is this time period when everything's  
10 operating, that it be managed in the most  
11 effective way possible. And I was just exploring  
12 whether that presents any engineering -- but it  
13 may be, given the testimony we've heard that the  
14 environment and sound engineering come together,  
15 and it would make everybody happy.

16 CHAIRMAN KEESE: It would be nice to  
17 know what the numbers were, and whether efficiency  
18 and emissions tie in.

19 Thank you.

20 HEARING OFFICER VALKOSKY: Redirect, Mr.  
21 Westerfield?

22 MR. WESTERFIELD: No redirect.

23 HEARING OFFICER VALKOSKY: Okay, thank  
24 you. I've got to admit I think we're suffering  
25 somewhat from not dealing directly with the TSE

1 conditions which staff proposed back in the June  
2 hearings. And Mr. Hesters, in the supplemental  
3 testimony, has indicated that no changes to  
4 staff's proposed conditions are required.

5 Although there have been some conditions  
6 suggested today which Mr. Hesters has indicated he  
7 needs to consult with counsel on.

8 So, unless there is any strenuous  
9 objection, maybe even if there is strenuous  
10 objection, what I would like staff to do is to  
11 assess the feasibility of the three additional  
12 conditions. And I'll repeat them as I understand  
13 them. And submit proposed language encompassing  
14 the intention of those conditions.

15 And, Mr. Ramo and Mr. Rostov, correct me  
16 if I'm wrong. The first condition would be a  
17 condition requiring applicant to comply with  
18 management by the ISO. Is that a fair summary?

19 MR. RAMO: Yes.

20 HEARING OFFICER VALKOSKY: Okay. Second  
21 condition would be to the extent that it would be  
22 in applicant's control, to consider the  
23 environmental impact when managing overloads.

24 CHAIRMAN KEESE: Do you -- I'm sorry,  
25 environmental impact from air emissions, is that

1       what you're --

2               HEARING OFFICER VALKOSKY:  Well, I think  
3       that's the principal one, but to the extent that  
4       there --

5               CHAIRMAN KEESE:  Okay.

6               HEARING OFFICER VALKOSKY:  -- there are  
7       associated ones, I think that's fair, too.  
8       Certainly I think air emissions are the principal  
9       one.

10              And the third is requiring applicant to  
11      commit to using ESPS, which have been identified  
12      at a previous time.

13              Staff, can you have this in two weeks?  
14      November 12th, roughly; I believe the 11th's a  
15      holiday.

16              MR. WESTERFIELD:  No problem from legal  
17      staff to do that.

18              HEARING OFFICER VALKOSKY:  Well, I mean  
19      to submit to the Committee and to the parties the  
20      results and proposed language.

21              MR. WESTERFIELD:  Yes.

22              HEARING OFFICER VALKOSKY:  Okay.  We'll  
23      require that by November 12th.  And then we'll  
24      give the parties a week to respond to it.  And see  
25      where we go from there.  So the parties would have

1       until November 19th to respond to the results of  
2       staff's work.   Okay?

3               MR. WESTERFIELD:   Hold on a second, Mr.  
4       Valkosky.   Could I have just a moment with my  
5       witness, because we're committing to a timeframe,  
6       and he's just indicated there could be a problem  
7       with that?

8               HEARING OFFICER VALKOSKY:   Certainly,  
9       let's go off the record.

10              (Off the record.)

11             MR. WESTERFIELD:   Staff has no problem  
12       meeting the deadline you suggested earlier.

13             HEARING OFFICER VALKOSKY:   Okay, so  
14       we'll look forward to staff filing on the 12th of  
15       November.   And, again, if that happens to be a  
16       holiday, take the leave -- I know Veterans Day is  
17       there.   And other parties can respond a week later  
18       on the 19th.   Okay?

19             Is there any public comment --

20             PRESIDING MEMBER PERNELL:   Is that okay,  
21       Mr. Carroll?

22             MR. CARROLL:   Yes, that's fine, thank  
23       you.

24             HEARING OFFICER VALKOSKY:   Is there any  
25       public comment on the topic of transmission system



1       engineering.

2               MR. WESTERFIELD:  Mr. Valkosky, before  
3       we get to that can we move our supplemental  
4       testimony?

5               HEARING OFFICER VALKOSKY:  I'm sorry, of  
6       course you can.

7               MR. WESTERFIELD:  So staff would like to  
8       move the supplemental testimony, which is exhibit  
9       51, I believe, into the record.

10              HEARING OFFICER VALKOSKY:  Is there  
11      objection?

12              MR. CARROLL:  No.

13              HEARING OFFICER VALKOSKY:  No objection,  
14      it's admitted.

15              MR. WESTERFIELD:  Thank you.

16              MS. MENDONCA:  Mr. Valkosky, it's not  
17      exactly public comment, but I did want the record  
18      to reflect that the Public Adviser was in  
19      attendance today.  Thank you.

20              HEARING OFFICER VALKOSKY:  Thank you,  
21      Ms. Mendonca.

22              Anything else on transmission system  
23      engineering?  Okay, with that, we will close the  
24      topic in general; however we are reserving the  
25      question of the conditions of acceptability and

1 the feasibility of imposing the additional  
2 conditions which we've discussed. Thank you, Mr.  
3 Hesters.

4 Okay, the next topic is power plant  
5 efficiency. Mr. Carroll.

6 MR. CARROLL: Applicant calls Valorie  
7 Zambito to testify in the area of project  
8 efficiency.  
9 Whereupon,

10 VALORIE ZAMBITO  
11 was called as a witness herein, and after first  
12 having been duly sworn, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. CARROLL:

16 Q Would you please state your name, title  
17 and role with respect to the project.

18 A As set forth in my CV, a true and  
19 correct copy of which was previously filed in  
20 these proceedings, I am employed by Mirant  
21 Corporation as Director of Technical Support.

22 In this capacity I'm responsible for  
23 managing a multidisciplinary technical team that  
24 provides technical expertise to operating plants  
25 and development of new operating assets.

1 I formerly served as Director of  
2 Engineering for Mirant in which capacity I was  
3 responsible for, among other things, managing a  
4 multidisciplinary engineering team that provided  
5 technical leadership and expertise for the design  
6 of generating facilities.

7 From 1998 until 2000 I was Mirant's  
8 Business Development Technical Manager for the  
9 West Coast, in which capacity I managed and  
10 coordinated, among other things, permitting  
11 efforts.

12 I have 21 years of experience in the  
13 power and chemical industries where my  
14 responsibilities have included project management,  
15 field engineering, engineering design.

16 I earned a BSME from the University of  
17 South Florida in 1981 and registered in the State  
18 of Florida as a professional engineer and  
19 mechanical contractor.

20 Q Thank you.

21 MR. CARROLL: May I request a moment to  
22 go off the record; something I need to clarify  
23 with the witness before we proceed.

24 HEARING OFFICER VALKOSKY: Certainly,  
25 Mr. Carroll. Off the record.

1 (Off the record.)

2 HEARING OFFICER VALKOSKY: Back on.

3 BY MR. CARROLL:

4 Q Ms. Zambito, are you the same Valorie  
5 Zambito that submitted prepared testimony in this  
6 proceeding which is now a portion of what's been  
7 labeled as exhibit 52?

8 A Yes.

9 Q And if I were to ask you the questions  
10 contained in that material just identified as  
11 exhibit 52 today, would your answers be the same?

12 A Yes.

13 Q And am I correct that there are also a  
14 number of exhibits identified in your prepared  
15 testimony that you're sponsoring today?

16 A Yes.

17 Q Could you please provide an overview of  
18 the anticipated efficiency of unit 7?

19 A The GE Frame 7FA gas turbines that will  
20 be provided for Potrero 7 represent one of the  
21 most efficient machines available on the market  
22 today. Using these machines in a combined cycle  
23 mode provides even more efficient fuel  
24 utilization.

25 Defining efficiency as the conversion of

1 the heat content of the fuel to the electricity  
2 output of a plant there are three operating modes  
3 that have been addressed for Potrero 7.

4 We look at normal peak output of 527  
5 megawatts at a heat rate of approximately 6690  
6 Btus per kilowatt hour in the summer; a normal  
7 peak output of 535 megawatts at a 6680 Btu per  
8 kilowatt hour heat rate in the shoulder months;  
9 and normal peak output of 548 megawatts at a 6698  
10 Btu per kilowatt hour heat rate in the winter.

11 The efficiency for these respective  
12 modes of operation would be 56.6 percent, 56.7  
13 percent and 56.6 percent based on a lower heating  
14 value, or 51.01 percent, 51.09 percent and 51  
15 percent based on a higher heating value.

16 During the life of the plant it is  
17 expected to operate over a range of conditions  
18 dictated by energy demand, system reliability  
19 requirements and market conditions.

20 Although output and efficiency of all  
21 gas turbines deteriorate slightly over a period of  
22 time, routine maintenance and good operating  
23 practice will minimize the effect on efficiency.

24 Q How's the efficiency of unit 7 compared  
25 to other types of power generation?

1           A     As stated above, the -- earlier, the  
2     combined cycle full load efficiency for Potrero 7  
3     utilizing the GE Frame 7FAs burning natural gas as  
4     its fuel is approximately 6700 Btus per kilowatt  
5     hour.

6                     Competing manufacturers' gas turbines in  
7     combined cycle mode are expected to be just  
8     slightly less efficient.

9                     In addition, a conventional type boiler  
10    utilize coal fuel oil or natural gas as its fuel  
11    can be expected to have a heat rate in the range  
12    of 9500 Btus per kilowatt hour to in excess of  
13    10,000 Btus per kilowatt hour.

14                    Simple cycle gas turbines run at heat  
15    rates of approximately 12,000 Btus per kilowatt  
16    hour.

17           Q     What is it about the design of a plant  
18    like unit 7 that makes it so efficient relative to  
19    the other generation technologies you've just  
20    described?

21           A     The proposed design for Potrero 7  
22    utilizes one of the most fuel efficient  
23    technologies available on the market today. And  
24    uses the equipment in a combined cycle mode.

25                    The design of Potrero 7 captures energy

1 in the form of heat exhausted from the gas  
2 turbines through an HRSG, or heat recovery steam  
3 generator, where water is converted to steam and  
4 the steam is sent to the steam turbine where the  
5 thermal energy is converted to electrical energy  
6 in the generator.

7 Q Thank you. Does that complete your  
8 testimony today?

9 A Yes.

10 MR. CARROLL: Valorie Zambito is  
11 tendered for cross-examination in the area of  
12 project efficiency.

13 HEARING OFFICER VALKOSKY: Mr.  
14 Westerfield.

15 MR. WESTERFIELD: The staff has no  
16 questions.

17 HEARING OFFICER VALKOSKY: Ms. Minor.

18 MS. MINOR: Just a couple of very basic  
19 questions.

20 CROSS-EXAMINATION

21 BY MS. MINOR:

22 Q Ms. Zambito, your testimony is that the  
23 efficiency differs in the shoulder months. Would  
24 you define the shoulder months in San Francisco?

25 A Gas turbines perform differently based

1 on the ambient conditions and elevation. And what  
2 we generally do is we will look at summer, winter  
3 and what we call shoulder months, in the area as  
4 we are modeling the units.

5 What we did was we took the, we looked  
6 at weather data for San Francisco over I think it  
7 was a period of 50 years or so, I can't recall  
8 exactly. And we looked at the hottest period of  
9 time in San Francisco for a percentage of that,  
10 and the coldest time. And then everything else  
11 out of that was considered the shoulder months.

12 Specifically I can't answer exactly what  
13 months of the year that was. I don't recall.

14 Q Do you know if your definition of  
15 shoulder months in San Francisco is specified  
16 someplace in the AFC? Can you point me to where I  
17 could find that?

18 A I don't remember if it was defined in  
19 there. I believe it was. And I can respond to  
20 you at a later time if you wish.

21 Q Would you check, please --

22 A I will look it up --

23 Q -- to see if there's a reference to the  
24 AFC for that?

25 A As you can see in my testimony San



1 Francisco is one of those areas where you don't  
2 see as much of a variation.

3 Q Um-hum.

4 A In a place like maybe Nevada you do see  
5 quite a bit of ambient condition variations that  
6 will significantly affect the operation of the  
7 units.

8 Q But the modeling was done specifically  
9 for San Francisco?

10 A The modeling certainly was done,  
11 definitely, absolutely was done based on weather  
12 conditions over many years of data for the San  
13 Francisco Bay Area.

14 Q Thank you. Thanks for that  
15 clarification.

16 MS. MINOR: I have no further questions.

17 HEARING OFFICER VALKOSKY: Mr. Ramo.

18 PRESIDING MEMBER PERNELL: I have a  
19 question.

20 Mr. Ramo -- I have just one question on  
21 your modeling. Is that over a one-month or three-  
22 month period when you say the hottest months, or  
23 the coldest months?

24 MS. ZAMBITO: I can't remember exactly  
25 how many months it was, Mr. Pernell, but I do know

1       that they take, our market analysis folks give us  
2       those conditions when we model. And they look at  
3       a percent of days of the year above -- the hottest  
4       days of the year, the coldest days of the year,  
5       and then the shoulder months.

6               PRESIDING MEMBER PERNELL: So it could  
7       be less than a month? Is that possible?

8               MS. ZAMBITO: I've not seen it yet less  
9       than a month. And it's not really a continuum.  
10       It's how many days per year --

11              PRESIDING MEMBER PERNELL: Is the  
12       hottest days?

13              MS. ZAMBITO: -- it is at these  
14       temperatures, and how many days per year it's at  
15       the cool temperatures. So it's not in terms of  
16       consecutive days, although it could very well be,  
17       turn out that way in a particular location.

18              They will look at it in terms of how  
19       many -- what percentage of time was it above this,  
20       or what was the temperature for this percentage of  
21       times of the year, and model it based on that.

22              PRESIDING MEMBER PERNELL: Okay, could  
23       you also get that information to the Committee,  
24       please?

25              MS. ZAMBITO: Sure.

1                   PRESIDING MEMBER PERNELL: Thank you.

2                   MR. RAMO: Good morning, again.

3                   MS. ZAMBITO: Good morning.

4                   CROSS-EXAMINATION

5                   BY MR. RAMO:

6                   Q     In the AFC there's a statement that  
7                   given the high efficiency of Potrero Unit 7 it is  
8                   expected that the facility will normally operate  
9                   at high annual capacity factors.

10                  Can you explain why high efficiency  
11                  leads to high annual capacity factors?

12                  A     Potrero 7 is a highly efficient unit, as  
13                  you can see from my testimony, in terms of heat  
14                  rate. And generally what we see in merchant type  
15                  environments, generally, or even power purchase  
16                  agreements, the more efficient units are run  
17                  generally before less efficient units are run.

18                  Because when you bid into the market,  
19                  and I don't profess to be an expert on bidding  
20                  into the market, but it's the more efficient units  
21                  are the ones that, because of cost, are the ones  
22                  that are operated more.

23                  Q     So you would expect this to displace  
24                  less efficient units, all things being equal in  
25                  the upper Peninsula of San Francisco?

1 A Yes.

2 Q Which would pretty much make this the  
3 dominant facility in the San Francisco area?

4 A I would think so, based on its  
5 efficiency.

6 Q Now, I asked you about a couple of  
7 numbers in the AFC that may all square, but I'm  
8 going to ask you to explain how they work  
9 together.

10 The AFC, there's a statement that Mirant  
11 projects an annual availability for the facility  
12 between 92 and 95 percent. I have two questions.  
13 The first question is what does annual  
14 availability mean? This is at page 2-35 in the  
15 AFC.

16 A In general terms, well, there's a  
17 calculation for calculating availability, but  
18 generally what it means is you take 8760 hours per  
19 year, how many hours there are in a year, and you  
20 subtract from that your number of hours that you  
21 would required for your routine maintenance.

22 For instance, on combustion turbines  
23 there is an annual, I believe it's seven days a  
24 year that you have to go int here for inspections,  
25 and then there's a cycle for maintenance and hot

1 gas inspections. And it's depending on the number  
2 of operating hours that the manufacturer  
3 recommends that you do certain maintenance of the  
4 equipment.

5 So you take those recommended  
6 maintenance period in hours, and you also take  
7 into account what you might think is the  
8 reliability of that facility based on its design.

9 And when you adjust all of that you look  
10 at, you take 100 percent available, subtract those  
11 number -- at 8760 hours and subtract the number of  
12 hours for maintenance, the number of hours you  
13 would assume to be unavailable due to forced  
14 outages, and what you have left is your projected  
15 availability of your unit.

16 Q And because the AFC is roughly two and a  
17 half years old, are those still the numbers that  
18 you would hold to, 92, 90, I guess between 92 and  
19 95 percent?

20 A Yes, I still would expect that  
21 availability from Potrero 7.

22 Q Now, the AFC also states that the  
23 facility is designed to operate between 30 and 100  
24 percent of full load to support market conditions.  
25 What's the relationship between the 30 and 100

1 percent, and the 92, 95 percent?

2 A The 92 and 95 percent is basically  
3 telling you we anticipate this unit to be  
4 available and ready for start anytime you need it  
5 up to 92 to 95 percent of the time.

6 The 30 to 100 percent is based on  
7 actually the megawatts you would anticipate that  
8 unit to operate at. A 100 percent load all the  
9 time, or maybe on your nonpeak times you might be  
10 at a minimum load.

11 A combined cycle has a minimum, what  
12 they call a minimum turndown ratio. In other  
13 words, how low can you go on our output of your  
14 gas turbines before you get into instability of  
15 operation.

16 And so if the ISO or market conditions  
17 has a need for us to come down to, say 150  
18 megawatts, then what we would do is -- and, you  
19 know, that would be part of the 30 to 100 percent,  
20 we would reduce load in order to operate most  
21 efficiently. Because efficiency, of course, means  
22 fuel costs to an owner.

23 So you would try to operate as most  
24 efficiently as you can in an operating scenario to  
25 be able to reduce your load. And yet provide your

1 committed capacity or your, you know, whatever  
2 market conditions or ISO would need.

3 Q There is a phrase to support market  
4 conditions which you just mentioned. And is there  
5 some -- can you explain what you meant when you  
6 said support market conditions?

7 A If the power is needed, or if you are  
8 bidding into the market and in a merchant type of  
9 environment, and your unit is necessary to run at  
10 say 540 megawatts of power. Market conditions is  
11 needing your power, your efficient operating power  
12 of 540 megawatts, as an example.

13 So, possibly --

14 Q So basically --

15 A -- like -- excuse me, like I was saying  
16 on a low load condition at night, weekends, when  
17 your load demand is not as high then your market  
18 conditions would be at a lower megawatt need.

19 Q So depending on what market  
20 opportunities are there, the facility can gear up  
21 from 30 percent to 100 percent, is that correct?

22 A Yes. And the nice thing about the  
23 combined cycle is that you have more flexibility  
24 generally than you would have in a conventional  
25 type unit because you could shut down one of your

1 gas turbines and operate the other one at a  
2 partial load or a full load. So you have some  
3 flexibility in that area.

4 Q You project the facility to be able to  
5 operate at least 40 years, is that correct?

6 A That's our projection, yes.

7 Q Does that mean at the end of 35 years it  
8 could be just as efficiently operating at 100  
9 percent capacity?

10 A Well, as I said earlier, you do get some  
11 efficiency deterioration with gas turbines. And  
12 you have to, again maintenance and operating  
13 practices will dictate. Gas turbines require that  
14 you have some -- you get build-up on your blading,  
15 and you have to go through and do combustion  
16 turbine washes and things like that.

17 And there's good operating practices  
18 that you will do. So, it's not as efficient as it  
19 would be on day one. But it's certainly very  
20 efficient, I think. I hope I don't misquote  
21 General Electric, but I think there's somewhere  
22 around a 2.5 to 3 percent effective or a life of a  
23 gas turbine in terms of its efficiency. So it's  
24 not all that significant in terms of its  
25 deterioration.



1           Q     I want to be sure I understood that last  
2     statement. Are you saying that 40 years later  
3     there might be a degrading of 2 to 3 percent in  
4     its efficiency?

5           A     Yes, but it's not a straight-line  
6     degradation like that. What happens is as you do  
7     your maintenance the efficiency will be increased  
8     again. And then years later there's some other,  
9     you know, over time there's a decrease.

10           And so an average over a 30- or 40-year  
11     life cycle you might see a 2 to 3 percent  
12     degradation.

13           Q     In terms of the other questions I asked  
14     you, would this variation in efficiency have a  
15     similar effect on availability or capacity? In  
16     other words, there might be a 2 to 3 percent  
17     variation after 30 years?

18           A     No, I wouldn't expect that. Certainly,  
19     just like with a car, as you continue to keep it  
20     up and do maintenance on it, and oil changes and  
21     that sort of thing, you can keep a car for a  
22     couple hundred thousand miles, possibly.

23           So, it's a matter of good operating  
24     practices and maintenance practices. And I  
25     wouldn't expect it to be less available in future

1 years.

2 Q I'm not sure you want to totally compare  
3 power plants with a car, but I'll let that be.

4 A I was trying to make an analogy that  
5 it's certainly much more complicated, but I was  
6 trying to make an analogy that maintenance and  
7 operating practices are crucial to operating these  
8 facilities.

9 Q Now, you answers, are they affected by  
10 whether Hunter's Point is in operation when unit 7  
11 is operating?

12 A No. Again, Potrero 7 is a stand-alone.  
13 It's efficiency and capacity factors -- the  
14 capacity factor, again, will be driven by how  
15 efficient is it operating. It's a very efficient  
16 unit. I'm not as familiar with Hunter's Point.  
17 Their heat rate at the existing Hunter's Point  
18 facility is more in the categories of I think what  
19 I said earlier, 10,000 or something like that. So  
20 it is much more efficient than the existing  
21 Hunter's Point unit. Certainly much more  
22 efficient than peakers.

23 Q And just to see if I can get some  
24 information to respond to Commissioner Keese's  
25 questions, would it be fair to say that you expect

1 unit 7 to be more efficient than unit 3?

2 A Yes.

3 Q And would it be fair to say that unit 3  
4 tends to be more efficient than the peakers?

5 A You're referring to Potrero 3, right?  
6 And Potrero peakers?

7 Q Yeah.

8 A Yes.

9 Q Do you have any information on the  
10 Hunter's Point facilities?

11 A I don't know the numbers, but I do know  
12 that it's a conventional type of unit. And then  
13 the other, I think they have a peaker there, as  
14 well. The conventional unit is similar to Potrero  
15 3, I believe, and its heat rate certainly is not,  
16 its efficiency is certainly not as good as the  
17 combined cycle Potrero 7.

18 Q And to the extent that you know, would  
19 it be fair to say that the environmental impacts  
20 of -- well, that may be too broad.

21 Would it be fair to say that the  
22 emission rates of these facilities are in the same  
23 proportion as their efficiency? In other words,  
24 you expect for the same amount of fuel unit 7 to  
25 be less polluting than unit 3 less polluting than

1 the peakers?

2 A I don't think you can say it runs in  
3 parallel in terms of efficiency and emissions.  
4 Potrero 7 is environmentally more efficient than  
5 the peakers.

6 Q What about unit 3? If you know?

7 A I don't know. I don't know.

8 Q In terms of our discussion about its  
9 availability, capacity factors, does it matter  
10 what kind of cooling system unit 7 uses as to its  
11 efficiency?

12 A As to efficiency? Yes, it does. The--  
13 trying to think of how to easily answer that,  
14 because it gets somewhat complicated.

15 Efficiency on your steam turbine or  
16 cycle of your facility can depend on your  
17 condenser efficiency. And with condenser back  
18 pressure basically you're -- I don't want to get  
19 too technical here, but it's an available energy  
20 that you may have not used based on your condenser  
21 back pressure design.

22 As you have a cooler medium transferring  
23 the heat from your steam, your back pressure can  
24 be lower. And by lower back pressure you could  
25 have more efficiency and output on your unit.

1           So, as you look at your back pressure of  
2   a once-through cooling system versus an air cooled  
3   system, for instance, your air cooled system  
4   requires a much higher -- or, not requires, but it  
5   will result in a much higher back pressure and  
6   less output on your unit.

7           MR. RAMO: Obviously when we get to  
8   cooling water I'll have a lot more questions on  
9   efficiency. If I can reserve the right to recall  
10   the witness when and if we get to the cooling  
11   water issue, then I have no further questions.

12          HEARING OFFICER VALKOSKY: Okay. Mr.  
13   Carroll, I believe Ms. Zambito is one of the  
14   witnesses identified, is that correct?

15          MR. CARROLL: She is, that's correct.

16          HEARING OFFICER VALKOSKY: Okay, so the  
17   witness will be available.

18          MR. RAMO: Fine, thank you.

19          HEARING OFFICER VALKOSKY: Mr. Rostov.

20          MR. ROSTOV: I just have a very few  
21   questions.

22                   CROSS-EXAMINATION

23   BY MR. ROSTOV:

24           Q    I'm just trying to understand the  
25   minimum turndown ratio on combined gas turbine.

1       So is that the 30 percent?

2           A     One gas turbine can be turned down to  
3       approximately 51 percent of megawatt output.  What  
4       happens is the -- it goes into an unstable  
5       condition with your firing area and NOx  
6       production.  And so you can't turn it down any  
7       more than that.

8           So I think the 30 percent was a plant  
9       output, taking into consideration 51 percent of  
10      each CT, combustion turbine or gas turbine, as  
11      well as your steam turbine and what it does to  
12      that.

13          Q     So it could be 50 percent one of them  
14      operating because one could be shut off, would  
15      that be the 30 percent or --

16          A     Absolutely -- yes, I think the 30  
17      percent is one gas turbine at 51 percent, and then  
18      what your output of your steam turbine would be,  
19      and that would represent 30 percent of what the  
20      total 500-and-something megawatts would have been.

21          Q     If it's even operating at that 30  
22      percent, it's considered available, is that  
23      correct?

24          A     Yes.

25          Q     Okay.  So it's not available it just

1 means that all of it's shut down?

2 A Yes.

3 Q And I just had a question about the  
4 availability. Mr. Ramo read you numbers about 92  
5 to 95 percent. And I recall, forgot which topic  
6 area, but it must have been one where you  
7 testified where I thought Mirant had now said that  
8 unit 7 would be available 85 percent of the time?  
9 They had --

10 A You know, I think we did have a  
11 resubmittal on that.

12 I'm sorry, that is correct. I think on  
13 project description we redid some calculations and  
14 it was around 90 percent. I can't recall, though.

15 Q Okay, but it's in the record?

16 A But it's in the record, and what I  
17 testified earlier is correct. I had just  
18 forgotten that we did go through and make some  
19 revisions to it.

20 Q Okay.

21 A Sorry.

22 MR. ROSTOV: No further questions.

23 HEARING OFFICER VALKOSKY: Okay, so  
24 could you just repeat what the correct number is?

25 MS. ZAMBITO: Yes. The availability, I

1 believe, was stated as being approximately 90  
2 percent in my earlier project description  
3 testimony, and what is correct is what was said in  
4 my testimony in June regarding project  
5 description.

6 HEARING OFFICER VALKOSKY: Okay, and  
7 that number was?

8 MS. ZAMBITO: I believe it was 90  
9 percent, sir. I can't recall exactly. I didn't  
10 go back and check it.

11 HEARING OFFICER VALKOSKY: Okay, but at  
12 any rate the June testimony is the correct figure?

13 MS. ZAMBITO: Yes.

14 HEARING OFFICER VALKOSKY: Okay. Any  
15 redirect?

16 MR. CARROLL: No redirect.

17 HEARING OFFICER VALKOSKY: Anything else  
18 for Ms. Zambito?

19 MR. CARROLL: I guess this doesn't  
20 qualify as redirect. I did want to point out one  
21 piece of information, response to a question asked  
22 by Ms. Minor on what the shoulder months were.

23 HEARING OFFICER VALKOSKY: Um-hum.

24 MR. CARROLL: One of the exhibits that  
25 Ms. Zambito is sponsoring is request to SAEJ data



1 request 33, footnote 6 of that document indicates  
2 the shoulder periods which are weeks 10 through 19  
3 and 44 through 48.

4 MS. MINOR: Mike, I'm sorry, let me get  
5 that down again, please. It's SAEJ data --

6 MR. CARROLL: SAEJ data request 33.

7 MS. MINOR: Okay.

8 MR. CARROLL: And footnote 6; it  
9 includes the shoulder weeks.

10 MS. MINOR: Right, thank you.

11 HEARING OFFICER VALKOSKY: Okay, and  
12 that, I would note, is contained in exhibit 38, is  
13 that correct?

14 MR. CARROLL: That is correct.

15 HEARING OFFICER VALKOSKY: Okay,  
16 anything else for Ms. Zambito on this topic?  
17 Thank you, ma'am.

18 Exhibits, Mr. Carroll?

19 MR. CARROLL: Yes, at this time we'd ask  
20 that exhibit 52, which is Ms. Zambito's prepared  
21 testimony, and exhibit -- I should say portions of  
22 exhibit 38, which are the SAEJ data requests  
23 identified in her prepared testimony, be admitted  
24 into the evidentiary record.

25 HEARING OFFICER VALKOSKY: Okay, how

1 about portions of exhibit 1, the AFC document?

2 MR. CARROLL: Actually the AFC did not  
3 include a section on efficiency, thank you.

4 HEARING OFFICER VALKOSKY: All right, so  
5 portion of exhibit 38 and exhibit 52. Any  
6 objections to admission?

7 MR. WESTERFIELD: No objections.

8 MS. MINOR: No objections.

9 HEARING OFFICER VALKOSKY: Hearing none,  
10 those two items are admitted.

11 MR. CARROLL: Thank you.

12 HEARING OFFICER VALKOSKY: Mr.  
13 Westerfield.

14 MR. WESTERFIELD: At this time staff  
15 would like to call Mr. James Henneforth to sponsor  
16 our testimony on power plant efficiency.

17 HEARING OFFICER VALKOSKY: Swear the  
18 witness, please.

19 Whereupon,

20 JAMES C. HENNEFORTH  
21 was called as a witness herein, and after first  
22 having been duly sworn, was examined and testified  
23 as follows:

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. WESTERFIELD:

3 Q Mr. Henneforth, could you please state  
4 by whom you're employed and what your position is  
5 and where?

6 A I'm employed by Pacific Group Electric  
7 Power; I'm a Principal of the company, a  
8 consulting organization.

9 We're on contract through Aspen  
10 Environmental to support the Energy Commission.

11 Q Could you briefly summarize your  
12 qualifications as they relate to the topic of  
13 power plant efficiency?

14 A Yes. My background is that I have a BS  
15 in mechanical engineering; I'm a registered  
16 professional engineer in the State of California.  
17 I have over 33 years experience in the power  
18 industry, designing, construction, development and  
19 operations of electric power generating  
20 facilities.

21 And I've prepared the testimony for the  
22 power plant efficiency for Unit 7 at Potrero.

23 Q Thank you. And do you swear that the  
24 testimony that you prepared and that's been  
25 submitted as part of the final staff assessment is

1 true and accurate to the best of your knowledge?

2 A I do.

3 Q And could you summarize, please, that  
4 testimony for us?

5 A Yes. The applicant, as explained, is  
6 proposing to construct the 540 megawatt combined  
7 cycle facility at Potrero, identified as unit 7.  
8 It is a two-on-one configuration which consists of  
9 two combustion turbines and one steam turbine.

10 The steam turbine will use hot gases  
11 that have been produced -- I'm sorry, the heat  
12 recovery steam generator on each of the combustion  
13 turbines will produce steam from the hot exhaust  
14 of the combustion turbines, and that steam will be  
15 used to drive approximately a 200-megawatt steam  
16 turbine. The combustion turbines are rated at  
17 approximately 175 megawatts each.

18 To enhance the capabilities of the plant  
19 during the hot months the plant will be designed  
20 to utilize evaporative cooling on the inlets to  
21 the combustion turbines.

22 Since the plant will use a significant  
23 amount of fuel, approximately 86 billion cubic  
24 feet per day, it's considered that this amount of  
25 fuel is significant; and therefore, from an

1 efficiency standpoint, we reviewed the project to  
2 make sure that there is not an inefficient or  
3 unnecessary consumption of energy.

4 The plant is proposed to burn natural  
5 gas. It will be connected to PG&E's gas system  
6 via a pipeline that already exists to the site.  
7 This pipeline is connected to an infrastructure of  
8 gas systems that will offer access of natural gas  
9 to the plant from locations in Canada, the Rocky  
10 Mountains, and the Southwest.

11 This is a vast amount of gas that would  
12 be available, and therefore it's concluded that  
13 the unit 7 would not pose an increase in demand  
14 for natural gas that would adversely impact  
15 supplies into California.

16 While the efficient design of the plant  
17 is important for a number of reasons, including  
18 fuel conservation and economics, there are no  
19 standards that exist that regulate the efficiency  
20 for unit 7 or, for that matter, for other non-  
21 cogeneration type projects.

22 The combustion turbines will operate at  
23 their maximum efficiency when at full-load  
24 conditions. And therefore, as they turn down to  
25 become less efficient. With this two-on-one

1 configuration as described earlier, the plant will  
2 have the flexibility of operating efficiently at  
3 some of the partial loads by shutting down one  
4 combustion turbine, the other one can operate at  
5 full load and the plant can continue to operate in  
6 an efficient manner.

7 This configuration also provides  
8 flexibility in operations for turndown for peaking  
9 service, load following and such.

10 The combustion turbine that's proposed  
11 for this is a General Electric Frame 7FA. It's  
12 among most efficient, heavy duty commercial  
13 turbines available now.

14 And in the configuration that's  
15 proposed, two-on-one, at ISO or standard  
16 conditions, the efficiency is expected to be about  
17 56 percent. This compares favorably with other  
18 types of power generation.

19 Conventional steam plants, using fossil  
20 fuels, generally operate at about 35 percent  
21 efficiency.

22 It's also more efficient than combustion  
23 turbines and peaking service, including smaller  
24 combustion turbines of an aeroderivative variety  
25 such as GE's LM2500 or LM6000.

1           Also it is more efficient than other  
2       applications such as distributed generation which  
3       use reciprocating diesels or natural gas engines  
4       or perhaps microturbines, other small combustion  
5       turbines or fuel cells.

6           So, in conclusion, we found that the  
7       proposed unit 7 with the overall efficiency of  
8       approximately 56 percent, will consume substantial  
9       amounts of energy, but will do so in an efficient  
10      manner.

11          It will not create significant adverse  
12      impacts on energy supplies, on resources. It's  
13      not expected to require additional sources of  
14      energy to be developed. It will not consume  
15      energy in a wasteful or inefficient manner. And  
16      no efficiency standards apply.

17          Therefore, it's concluded that unit 7  
18      would present no significant adverse impacts upon  
19      energy resources.

20          This ends my summary.

21          Q     Thank you, Mr. Henneforth.

22          MR. WESTERFIELD: We have no further  
23      questions

24          HEARING OFFICER VALKOSKY: Mr.  
25      Henneforth, how does the efficiency of the Potrero

1 Unit 7 compare with other modern combined cycle  
2 plants?

3 MR. HENNEFORTH: Potrero 7 is comparable  
4 to other configurations of combined cycle plants.  
5 It might actually show a little better efficiency  
6 because of its location, being actually at a sea-  
7 level, as opposed to an elevation difference that  
8 might exist at other plants.

9 HEARING OFFICER VALKOSKY: Okay, thank  
10 you.

11 Mr. Carroll.

12 MR. CARROLL: No questions.

13 HEARING OFFICER VALKOSKY: Ms. Minor.

14 MS. MINOR: No questions, thank you.

15 HEARING OFFICER VALKOSKY: Mr. Ramo.

16 CROSS-EXAMINATION

17 BY MR. RAMO:

18 Q Mr. Henneforth, I have some questions  
19 about the fuel availability issue that you  
20 discussed in your testimony.

21 I gather from your written testimony  
22 that you acknowledge that fuel availability is  
23 subject to seasonal variations in supply, delivery  
24 and pricing of natural gas, is that correct?

25 A That's correct.



1           Q     To what extent do you expect those  
2     variations to take place?

3           A     I would expect that there would be price  
4     variations when consumption is high, which would  
5     be in the colder months. And then the supplies  
6     tend to be more highly managed during that time,  
7     if you will, because of our residential type  
8     consumptions.

9           Q     Can you give any kind of percentage  
10    estimate as over the next 40 years how much these  
11    supplies and prices may vary?

12          A     No, my testimony doesn't go into that  
13    detail relative to the looking out into the future  
14    or what the quantities are.

15          Q     I also gather, you mention in your  
16    summary, of the fuel for this power plant is  
17    coming from out of state, is that correct?

18          A     Most likely it would, yes.

19          Q     And you included the Rockies, the  
20    Southwest and Canada, is that correct?

21          A     Well, those would be potential areas it  
22    could come from.

23          Q     Are there other areas where it may come  
24    from?

25          A     Well, to the degree that the gas systems

1 are interconnect, I guess it could come from the  
2 Gulf States and so forth.

3 Q Now, you also, in your testimony,  
4 indicated that the Energy Commission has made  
5 predictions that the supplies will be adequate for  
6 many years. Did I state that correctly?

7 A That's correct.

8 Q Are these predictions in a report?

9 A I don't have a specific reference to a  
10 report other than they've assessed that, and that  
11 has been conclusions that have been drawn  
12 previously.

13 Q So at the moment you don't recall any  
14 particular instance where the Commission made that  
15 prediction?

16 A I don't recall.

17 Q So you don't know when these predictions  
18 were made?

19 A Well, I don't have a reference to a  
20 report where the predictions are made.

21 Q Is that something that you could obtain  
22 after today?

23 A I believe it is.

24 Q And so I gather also you don't know if  
25 those predictions were for 40 years or five years

1 or ten years?

2 A That's correct.

3 Q Now, it's true, is it not, that two  
4 years ago there was a problem with out-of-state  
5 natural gas deliveries during the California  
6 energy crisis?

7 A I'm not familiar with the specifics of  
8 that, but I do know that there have been -- you  
9 know, just reading the newspapers, as you have,  
10 that there have been questions about whether gas  
11 was delivered that could have been delivered.

12 Q Are you aware that on January 19, 2001,  
13 the President had to declare a natural gas supply  
14 emergency?

15 A That is -- the easy answer is no.

16 Q You're not aware?

17 A I'm not -- yeah, I'm not familiar with  
18 it.

19 Q So that's not something you evaluated  
20 with --

21 A No.

22 Q -- determining whether there might be a  
23 resource problem?

24 A No. There's a number of reasons why,  
25 you know, there's resource availability, and then

1       there's transmission availability. And there are,  
2       you know, fluctuations within the market at any  
3       point in time.

4               And I'm not familiar with the conditions  
5       at that time, what might have caused that type of  
6       action, whether it was a resource problem, a gas  
7       transmission problem or even perhaps, you know,  
8       marketing problems of sort. I just don't have the  
9       answer to that.

10       Q       So you aren't today presenting to the  
11       Commission any assurance that that won't happen  
12       again?

13       A       Well, I don't believe anybody could do  
14       that. I mean that would be pretty presumptuous, I  
15       think.

16       Q       Are you aware of whether there's any  
17       contingency plan for operating unit 7 if natural  
18       gas is not available?

19       A       Contingency plans such as --

20       Q       Any contingency plan if natural gas  
21       supplies are halted.

22       A       I think that's a question -- I'm not  
23       aware of that; that's probably a question for the  
24       applicant. I don't know how it would be operated  
25       without natural gas.

1           Q     I'm not aware, either. I just wanted to  
2     see if you have any knowledge about that.

3                     Have you been involved in other siting  
4     cases in the last year before the Energy  
5     Commission?

6           A     I have.

7           Q     And how many of those involved natural  
8     gas facilities?

9           A     I believe all of them have.

10          Q     How many are we speaking of?

11          A     Okay, --

12          Q     Approximately. Give me a range.

13          A     Oh, six, probably.

14          Q     Are you aware of how many siting cases  
15     the Commission has done in the last two years?

16          A     I don't have a good count of that, but I  
17     know it's more than I've been involved in.

18          Q     And do you have any sense of what  
19     percentage of those have been for natural gas  
20     facilities?

21          A     I would say the majority.

22          Q     It's closer to 90 percent, isn't it?

23          A     Possibly. I wouldn't take issue with  
24     that, but I don't know the number.

25          Q     Now, in doing a cumulative impact

1 analysis of a facility that's using a fuel supply,  
2 isn't it important to understand what other siting  
3 decisions the Commission is taking?

4 A I believe in a general sense it is, but  
5 I think when we're talking about the cumulative  
6 impact, looking at the resources available, that  
7 that is pretty inherent in the reviews of each  
8 project.

9 Q Well, if you're talking about whether  
10 there's going to be a fuel problem for a facility,  
11 isn't it correct you need to know two things? One  
12 is how much is in the earth; and second, is it  
13 going to be delivered, is that correct?

14 A I'd agree with that.

15 Q And if the Commission was banking the  
16 future of energy production in California on  
17 natural gas, wouldn't that be a factor in  
18 determining what the cumulative impact of  
19 licensing this kind of project is?

20 A Restate the question, please.

21 Q Well, you purport to do a cumulative  
22 impact analysis in your testimony, correct?

23 A That's correct.

24 Q Doesn't it matter from a cumulative  
25 standpoint what the accumulation of other siting

1 decisions are in making a cumulative analysis?

2 A The cumulative impact of getting gas to  
3 this project takes into consideration the  
4 availability of the resource and the ability to  
5 deliver. I think that's what you're asking. And  
6 the answer to that would be yes.

7 Q Well, isn't it a significant impact if  
8 an agency continues to license natural gas  
9 facilities when that fuel supply is subject to  
10 being cut off?

11 A It's a significant --

12 Q -- determine it won't be?

13 A It is significant when any large amount  
14 of gas is used in a facility. Would it be an  
15 adverse impact is what we tried to look at here,  
16 and say, even on a cumulative basis, that the  
17 impact would not be adverse.

18 Q Well, wouldn't you, on a cumulative  
19 basis, add the amount of natural gas being used  
20 for this facility to what other facilities are  
21 using?

22 A You would take it into consideration,  
23 put it that way.

24 Q And you didn't take it into  
25 consideration, --

1           A     Well, I think in a general sense, yes.

2           Q     And could you describe how generally you  
3 took it into consideration?

4           A     General sense to look at the potential  
5 resources available that the pipelines would have  
6 access to, which are vast. And I think an  
7 accurate determination can be made that they are  
8 sufficient that this plant could be supplied,  
9 along with other projects that are being  
10 considered in California.

11          Q     Yet you don't know if those supplies  
12 were projected for one year, five years, ten years  
13 or the full life of this facility, do you?

14          A     I believe that they have been projected  
15 for some term. I don't have the numbers  
16 associated with that.

17          Q     Okay, thank you.

18               MR. RAMO: I've completed my  
19 questioning.

20               HEARING OFFICER VALKOSKY: Mr. Rostov.

21               MR. ROSTOV: No questions.

22               HEARING OFFICER VALKOSKY: Mr.  
23 Henneforth, when you're talking about the  
24 availability of the gas supply, the resource, are  
25 you factoring in the gas supply that will also be



1 required by the other power plants which have been  
2 certified by the Commission, or which --

3 MR. HENNEFORTH: That's correct.

4 HEARING OFFICER VALKOSKY: Okay. Now,  
5 when you're factoring that in, that is correct,  
6 are you talking about only the power plants in the  
7 Bay Area, the northern California area, or  
8 statewide?

9 MR. HENNEFORTH: It would need to be,  
10 well, the answer is it would be both. The  
11 availability into the Bay Area is probably more of  
12 a concern from a delivery standpoint. But the  
13 availability of gas statewide would be more of an  
14 overall consumption standpoint looking at total  
15 resources that would be available from the market.

16 HEARING OFFICER VALKOSKY: Okay, and am  
17 I correct that you considered both of those  
18 aspects?

19 MR. HENNEFORTH: Yes, you're correct.

20 HEARING OFFICER VALKOSKY: Okay, thank  
21 you. Redirect?

22 MR. WESTERFIELD: No questions, thank  
23 you.

24 HEARING OFFICER VALKOSKY: Anything else  
25 for --

1           CHAIRMAN KEESE: I would just observe  
2           that the Energy Commission's natural gas report  
3           came out within the last month, I believe. And I  
4           think the answers are in there. I would suggest  
5           that it's 50 years unlimited supply. The question  
6           is how much is the cost. Fifty years unlimited  
7           supply with conventional technology. The question  
8           is --

9           MR. RAMO: And if El Paso cooperates.

10          CHAIRMAN KEESE: It's a question of  
11          cost, you know. When the price of natural gas  
12          goes up, they start drilling more.

13          HEARING OFFICER VALKOSKY: As a follow-  
14          up, Mr. Henneforth, Mr. Ramo was asking about the  
15          basically the source for your predictions on the  
16          availability of gas. And if it is the gas report,  
17          could you include what that source was in staff's  
18          November 12th filing?

19          MR. HENNEFORTH: Certainly.

20          HEARING OFFICER VALKOSKY: Okay, thank  
21          you. Anything else for Mr. Henneforth?

22          MR. CARROLL: Point of clarification on  
23          the last, directed to the staff. Am I to  
24          understand then that the Commission's gas  
25          availability report would then be incorporated

1 into the staff's testimony with respect --

2 HEARING OFFICER VALKOSKY: I don't know  
3 if that's the source he relied upon or what. I'm  
4 looking for the identification of the source that  
5 the witness used.

6 MR. CARROLL: Okay, so --

7 HEARING OFFICER VALKOSKY: If there is a  
8 request to take official notice of the gas report,  
9 you know, one of the parties can request that the  
10 Committee may do that on its own motion. Okay?  
11 But, again, first I'm not even sure that the  
12 witness relied on the report. Okay.

13 Yeah, any exhibits?

14 MR. WESTERFIELD: We do have an exhibit,  
15 thank you. We would like to move into the record  
16 that portion of exhibit 3 entitled power plant  
17 efficiency

18 HEARING OFFICER VALKOSKY: Okay, and how  
19 about exhibit 53, which is the r, sum, of Mr.  
20 Baker?

21 MR. WESTERFIELD: Thank you. Also that  
22 one, as well.

23 HEARING OFFICER VALKOSKY: Okay, is  
24 there any objection to receiving a portion of  
25 exhibit 3, and exhibit 53?

1 MS. MINOR: No objection.

2 MR. CARROLL: No objection.

3 MR. RAMO: No objection.

4 HEARING OFFICER VALKOSKY: No  
5 objections. Thank you, those documents are  
6 admitted.

7 Commissioner Pernell has a question.

8 PRESIDING MEMBER PERNELL: Actually it's  
9 not for staff, sorry; it's for applicant. One of  
10 the questions was that staff was -- the witness  
11 was unable to answer and that was is there a  
12 contingency plan if there's no gas available.

13 MR. CARROLL: Is the question whether  
14 the plant could be operated on an alternative  
15 fuel?

16 PRESIDING MEMBER PERNELL: Well, the  
17 question is simply if there is, for some reason, a  
18 disruption in the supply of natural gas can the  
19 plant be operated. Whether that's --

20 MR. CARROLL: Ms. Zambito is prepared to  
21 respond to that question.

22 MS. ZAMBITO: Potrero 7 is designed for  
23 a single fuel which is natural gas. It is not  
24 designed for alternative fuels.

25 PRESIDING MEMBER PERNELL: Is there any

1 alternative fuel on the site for some of the other  
2 generators?

3 (Pause.)

4 PRESIDING MEMBER PERNELL: Do you want  
5 to go off the record, Mr. Carroll?

6 MR. CARROLL: Mr. Harrer is here. He  
7 hasn't been sworn. He can respond to that  
8 question now, or I can make a note to have him  
9 respond at a future time when he appears.

10 PRESIDING MEMBER PERNELL: Under  
11 reliability? Is he scheduled --

12 HEARING OFFICER VALKOSKY: Can we go off  
13 the record, please.

14 (Off the record.)

15 HEARING OFFICER VALKOSKY: Anything else  
16 for Mr. Henneforth? Thank you, sir, you're  
17 excused.

18 Is there any public comment on the topic  
19 of power plant efficiency? Seeing no public  
20 comment, that topic is closed.

21 Go off the record, please.

22 (Whereupon, at 12:19 p.m., the hearing  
23 was adjourned, to reconvene at 1:15  
24 p.m., this same day.)

25 --o0o--

## AFTERNOON SESSION

1:25 p.m.

HEARING OFFICER VALKOSKY: Back on the record. This portion of today's proceeding we devoted to discussing and hearing arguments on the motion to continue/suspend, which was filed by the City and County of San Francisco.

That motion is supported by Intervenor NPOC, also the Dogpatch Neighborhood Association and the Potrero Boosters Neighborhood Association, as well as by OCE/SAEJ and CBE.

Potrero Boosters and the Dogpatch intervenors also filed a separate motion. OCE/SAEJ joined the City and County's motion to continue. And CBE joined that joinder.

Applicant filed a response on October 15th.

The way I intend to proceed is first we'll hear from the intervenors making the motion, then from staff and the applicant. In our supplemental agenda I'd like to advise the parties of the 15-minute time limitation, and also in order to move through this thing more efficiently. And please let me know if anybody has any strong disagreement.

1 I'd like everyone to realize that this  
2 is not the forum to debate the merits of the San  
3 Francisco Energy Plan, or anything related to  
4 that.

5 And, Ms. Minor, is there any  
6 disagreement that if applicant withdraws the  
7 request to amend the FDOC that that issue is then  
8 moot, the basis for your motion is then moot?

9 MS. MINOR: We have not actually  
10 received anything in writing indicating that it  
11 has happened and --

12 HEARING OFFICER VALKOSKY: Right.

13 MS. MINOR: -- it's one of the issues  
14 that we would like to raise today, confirmation  
15 that, in fact, --

16 HEARING OFFICER VALKOSKY: Okay, no,  
17 that's --

18 MS. MINOR: -- that has occurred.

19 HEARING OFFICER VALKOSKY: And that's  
20 fair. But I mean if, in fact, it has or it does  
21 in the near future, then that basis for your  
22 motion is moot, right?

23 MS. MINOR: That's correct, we --

24 HEARING OFFICER VALKOSKY: Okay.

25 MS. MINOR: -- will not proceed with

1       that argument.

2               HEARING OFFICER VALKOSKY:  Now, do you  
3       have any disagreement that we'll hear all about  
4       the single contingency issue tomorrow during  
5       reliability?

6               MS. MINOR:  I'm sorry, what is the  
7       question?

8               HEARING OFFICER VALKOSKY:  One of the  
9       issues you raise as the basis for your motion is  
10      the single contingency question.

11              MS. MINOR:  That's correct.

12              HEARING OFFICER VALKOSKY:  Okay, what  
13      I'm trying to explore, whether that basis for the  
14      motion is also moot since we'll be hearing that  
15      tomorrow during the reliability topic.  I mean do  
16      you disagree with that assessment, or --

17              MS. MINOR:  The basis of our argument  
18      and the motion is that the plant should be  
19      redesigned.  I do think that the motion is being  
20      heard in advance of the evidentiary testimony, and  
21      certainly at the time we filed our motion ISO had  
22      not filed its testimony on that --

23              HEARING OFFICER VALKOSKY:  No, I  
24      understand that, yeah.

25              MS. MINOR:  -- on that case.  And so I



1 would actually like to proceed to make that  
2 argument today so that the Committee can have the  
3 benefit of the opposition, and it can be on the  
4 record. And then we can undertake the evidentiary  
5 hearing tomorrow.

6 HEARING OFFICER VALKOSKY: Okay. Well,  
7 I would note that we are going to do that tomorrow  
8 in the evidentiary presentation. And I would also  
9 request that parties focus on what, at least to  
10 the Committee, seems to be the two most relevant  
11 items. One is the authority of the Committee to  
12 suspend the proceeding. And two, is the effect of  
13 the lack of site control on the project.

14 Okay, with all those caveats, please  
15 proceed.

16 MS. MINOR: Thank you. Commissioners,  
17 on behalf of the City we appreciate you taking the  
18 opportunity to hear oral argument on our motion to  
19 continue, because we do think that we're at a  
20 significant juncture in this case where, in  
21 particular, the issue of site control is of  
22 paramount importance.

23 What I'd like to do is to talk about the  
24 bases for the City's motion, to address the issue  
25 of the authority of the Commission or this

1 Committee to consider a motion. And thirdly,  
2 briefly address several of the issues raised by  
3 the applicant in its response.

4 The bases for the City's motion are  
5 threefold. And the one that I will focus in on is  
6 the issue that based upon the current design, that  
7 is the design of Potrero Unit 7 that's before this  
8 Committee, Mirant requires an agreement with the  
9 Port. And it does not have an agreement with the  
10 Port.

11 This is a fundamental issue of site  
12 control. In August 2001 at the status conference  
13 in this matter Mirant represented to this  
14 Committee that it expected to have site control  
15 within two months. That was two months of August  
16 2001. Again, there is no site control.

17 Not only is an agreement with the Port  
18 required, but under the ordinance passed by the  
19 Board of Supervisors of San Francisco in May 2001,  
20 any such agreement that is entered into between  
21 Mirant and the Port not only requires approval of  
22 the Port Commission, but also agreement of the San  
23 Francisco Board of Supervisors.

24 We think that one of the interesting  
25 questions that we actually have to deal with is

1       why more than two years into this proceeding we  
2       are proceeding in a case where the applicant  
3       cannot demonstrate to this Committee that it  
4       controls the property for which it is trying to  
5       build a power plant.

6               I'd like to point the Committee to the  
7       findings of the State Auditor in its review of the  
8       Commission's siting process. The State Auditor's  
9       report, which is dated August 2001, which was  
10      submitted to this Commission, the Governor and the  
11      State Legislature, and it's a matter of public  
12      record. It's available on your website, and I do  
13      have a few extra copies, if anyone would like to  
14      see it.

15             The State Auditor looked specifically at  
16      the reasons for delays in the siting process. And  
17      if I could point you to pages 21 and 26 of the  
18      State Auditor's report -- I do have a few extra  
19      copies. Would you like -- would it be helpful if  
20      I stopped?

21             HEARING OFFICER VALKOSKY: Please, it  
22      would be, yes.

23             (Pause.)

24             MS. MINOR: I'm looking specifically at  
25      pages 21 and 26. The State Auditor's report, and

1 I'm quoting, states:

2 Another party that plays a role in the  
3 approval of power plant applications is the  
4 public. The public's responsibility for  
5 delays tends to be more indirect, although  
6 for three of the applications approved since  
7 1990, public opposition was partially  
8 responsible for delays in the approval  
9 process.

10 For example, the San Francisco Energy  
11 Company's cogeneration project experienced a  
12 delay of 179 days. Public opposition was  
13 only one of several causes of the delay; and  
14 it was not successful in blocking the  
15 application on the basis of environmental  
16 concern.

17 However, the project was not ultimately  
18 completed because the applicant was denied a  
19 required lease. A denial that was at least  
20 in part influenced by public outcry."

21 And then going on to page 26:

22 Three additional projects were never  
23 constructed, even though the Energy  
24 Commission approved them. According to the  
25 Energy Commission one project was not

1           constructed because the City and County of  
2           San Francisco did not approve the company's  
3           lease due to public opposition.

4           The City and County of San Francisco is  
5           also blocking the construction of a more  
6           recently approved project."

7           The latter project being the so-called  
8           Golden Gate Project at the Airport.

9           It is our view that in light of recent  
10          experiences in San Francisco where site control  
11          has been an important issue in the same area of  
12          San Francisco related to the ability to build a  
13          power plant that has been licensed, that it is  
14          important for this applicant to demonstrate that  
15          it has the license or lease that is required to  
16          build the once-through cooling system that it  
17          proposes.

18          It also seems to us that given the  
19          recent experience with the San Francisco  
20          cogeneration project, as well as the Airport  
21          project, that we should halt, at least temporarily  
22          halt, the further expenditure of public funds and  
23          public resources, both at the state level and at  
24          the local level, until such time as Mirant can  
25          demonstrate that it does, in fact, have site

1 control.

2 The second bases for the City's motion  
3 is the request by Mirant to modify its FDOC. As  
4 we discussed just prior to the hearing on this  
5 motion, Mirant, in its response, has indicated  
6 that it has withdrawn its application to modify  
7 the FDOC. The City has not, as of yet, seen any  
8 written document either from Mirant or from the  
9 Air District indicating that, in fact, the  
10 modification or the attempt to modify the FDOC has  
11 been filed with the Air District.

12 And so until such time as we do receive  
13 written notification from Mirant to that effect,  
14 we would like to pursue, or at least to proceed on  
15 the motion on the ground that the modification  
16 that is required should be completed before we  
17 continue with evidentiary hearings in this matter.

18 The third basis for the City's motion  
19 was the City's concern about whether or not ISO  
20 considered unit 7 to be a single contingency power  
21 plant. As the Committee knows, subsequent to the  
22 filing of the City's motion, ISO filed testimony  
23 in this matter indicating that, in fact, it viewed  
24 unit 7 as a single contingency power plant.

25 Mirant clearly disagrees with ISO's

1 determination in that regard. It is the City's  
2 view that because ISO is responsible for  
3 electrical reliability and manages the electric  
4 grid, that ISO's finding must be given substantial  
5 weight.

6 Tomorrow the City's witness, Ed Smeloff,  
7 who will testify on reliability, will indicate  
8 that the reason the City cares about whether unit  
9 7 is a single contingency power plant is because  
10 the City has two major policy objectives.

11 One relates to the shutdown of Hunter's  
12 Point; the second relates to the shutdown of  
13 Potrero Unit 3.

14 If, in fact, Potrero Unit 7 is  
15 considered a single contingency power plant, the  
16 City strongly believes that this determination  
17 impedes the shutdown of Potrero Unit 3.

18 Secondly, I would like to address the  
19 issue of whether or not this Commission has  
20 authority to consider this motion. And I'd like  
21 to point you to section --

22 PRESIDING MEMBER PERNELL: Can I  
23 interrupt you just for a minute?

24 MS. MINOR: Yes.

25 PRESIDING MEMBER PERNELL: The City is -

1 - contingency is to shut down unit 3 in Potrero,  
2 and not Hunter's Point?

3 MS. MINOR: We have several policy  
4 objectives. We would like to shut down Hunter's  
5 Point. And, as specified in the City ordinance,  
6 that's been called the Maxwell Ordinance in this  
7 proceeding, we also want to shut down Potrero Unit  
8 3 as soon as it's not needed for electrical  
9 reliability. Both.

10 So, Hunter's Point as well as Potrero  
11 Unit 3.

12 PRESIDING MEMBER PERNELL: And you're  
13 saying that that won't affect reliability?

14 MS. MINOR: Well, --

15 PRESIDING MEMBER PERNELL: It appears to  
16 me that we're taking capacity off the line per the  
17 City's goals. And I just don't see anything  
18 replacing that.

19 MS. MINOR: This will be discussed more  
20 specifically tomorrow in the reliability  
21 testimony. But, from an --

22 PRESIDING MEMBER PERNELL: I'll look  
23 forward to that.

24 MS. MINOR: Would you like me to explain  
25 it now?



1           PRESIDING MEMBER PERNELL: I guess the  
2           question is, is the City's suggestion to not only  
3           shut down Hunter's Point, but shut down unit 3 in  
4           Potrero?

5           MS. MINOR: If unit 7 is built, and if,  
6           as ISO says, it's considered a single contingency,  
7           under the planning criteria, even though you build  
8           this new large power plant, 540 megawatts, for  
9           unit 7, there still would have to be backup in  
10          City generation. And that would be unit 3.

11          PRESIDING MEMBER PERNELL: That would be  
12          unit 4.

13          MS. MINOR: It would be Potrero Unit 3.

14          PRESIDING MEMBER PERNELL: Unit 3.

15          MS. MINOR: Yes, Potrero Unit 3, under  
16          the ISO's planning criteria, which is why the City  
17          is concerned that unit 7 is a single contingency  
18          power plant.

19          If it were redesigned to eliminate the  
20          finding that it is a single contingency power  
21          plant, if unit 7 were built, unit 3, using ISO's  
22          planning criteria, could be shut down.

23          PRESIDING MEMBER PERNELL: Okay. We'll  
24          hear more about this tomorrow?

25          MS. MINOR: Yes.

1 HEARING OFFICER VALKOSKY: Just before  
2 we get off the topic, you mentioned that shutdown  
3 of Hunter's Point and the shutdown of Potrero Unit  
4 3 are City policies. Are these policies  
5 officially adopted by the City, or are they City  
6 Staff policies?

7 MS. MINOR: There are several answers to  
8 that question. There is an agreement that was  
9 entered into in 1998 between the Mayor of San  
10 Francisco and PG&E to shut down Hunter's Point.

11 ISO, in a recent meeting, directed its  
12 staff to work with City officials to work toward  
13 the shutdown of Hunter's Point.

14 There seems to be a fairly broad  
15 consensus that Hunter's Point should, in fact, be  
16 shut down.

17 With respect to Potrero Unit 3, the  
18 shutdown of Potrero Unit 3 is a City policy that  
19 is in an ordinance passed by the San Francisco  
20 Board of Supervisors in May 2001. It was passed  
21 unanimously by the board of supervisors. So it is  
22 law.

23 HEARING OFFICER VALKOSKY: Thank you.

24 PRESIDING MEMBER PERSELL: But there is  
25 no such law for Hunter's Point?

1 MS. MINOR: There is a signed agreement  
2 between the Mayor and PG&E for the shutdown of  
3 Hunter's Point. In addition, in 2001, when the  
4 City ordinance was passed, the board reiterated  
5 the policy position that Hunter's Point be shut  
6 down as soon as possible.

7 PRESIDING MEMBER PERNELL: Right. And  
8 just one final question on this. My understanding  
9 is if Hunter's Point provides reliability to  
10 whatever degree, that it can't be shut down until  
11 some replacement generation has occurred, is that  
12 your understanding?

13 MS. MINOR: ISO is in the process of  
14 determining what, if any, replacement generation  
15 is going to be required for the shutdown of  
16 Hunter's Point. We have not gotten a definitive  
17 response from ISO as of yet as to how much  
18 generation that's going to be -- that will be  
19 required.

20 PRESIDING MEMBER PERNELL: But some will  
21 be required?

22 MS. MINOR: Some.

23 PRESIDING MEMBER PERNELL: Okay.

24 MS. MINOR: Yes.

25 CHAIRMAN KEESE: In the agreement with

1 PG&E is there a stipulation that there has to be  
2 generation, and that triggers the shutdown of  
3 Hunter's Point?

4 MS. MINOR: The agreement with PG&E  
5 specifies that Hunter's Point can be shut down  
6 when it's no longer needed for electric  
7 reliability.

8 CHAIRMAN KEESE: Generic terms --

9 MS. MINOR: That's right.

10 So, continuing on the question of the  
11 authority of this Commission to entertain the  
12 City's motion.

13 We are relying on two provisions in the  
14 regulations. Sections --

15 PRESIDING MEMBER PERNELL: In what?

16 MS. MINOR: Section 1716.5 in the  
17 Commission regulations.

18 PRESIDING MEMBER PERNELL: Oh, okay.

19 MS. MINOR: And section 1203(c).  
20 Section 1716.5 provides that any party may file a  
21 motion regarding any aspect of the application  
22 proceeding.

23 And then section 1203(c) of the  
24 regulations provides that the Presiding Member may  
25 regulate the conduct of hearings including

1 continuing the hearings.

2 Mirant's opposition to our motion, at  
3 least on this issue, in part seems to be based  
4 upon its concern that the City does not specify a  
5 date certain for these hearings to continue.

6 The City actually has no objection to  
7 specifying a date certain for continuance of the  
8 hearing provided that date certain is coupled with  
9 the condition that by that date certain Mirant had  
10 obtained a license with the Port.

11 PRESIDING MEMBER PERNELL: That's an  
12 agreement with the Port of San Francisco, when you  
13 say license?

14 MS. MINOR: Yes, the license agreement  
15 would be with the Port of San Francisco, which is  
16 a department of the City and County of San  
17 Francisco.

18 PRESIDING MEMBER PERNELL: Okay.

19 MS. MINOR: And then under our governing  
20 structure, such an agreement would also have to be  
21 approved by the Board of Supervisors of San  
22 Francisco.

23 The last point that I wanted to address  
24 just very briefly, and I think the Hearing Officer  
25 has already acknowledged this, is that Mirant, in

1 its opposition, addresses the San Francisco Energy  
2 Plan.

3 We think that the appropriate standard  
4 for this Commission to look at is really the  
5 standard that's set forth in 1748(e) which  
6 provides for the applicant's burden of proof in a  
7 siting case.

8 Under your regulations the applicant has  
9 the burden of presenting sufficient substantial  
10 evidence to support the findings and conclusions  
11 required for certification. That, of course,  
12 includes a demonstration that it has site control.

13 The City's Energy Plan is a policy draft  
14 guideline that the City Staff has submitted to the  
15 board of supervisors. The City is not seeking  
16 certification from this Commission of anything in  
17 its energy plan, and so the City has no burden of  
18 being able to demonstrate, at least at this time,  
19 that any item in the energy plan meets the  
20 standards for certification.

21 So we believe that the energy plan is  
22 completely irrelevant and immaterial to these  
23 proceedings. And that what Mirant needs to  
24 demonstrate at this point in order to go forward  
25 is that it has site control.

1 HEARING OFFICER VALKOSKY: Thank you. I  
2 just have two clarifying questions. Did I hear  
3 you correctly that the energy plan is, at this  
4 point, a staff document and not an official City  
5 document?

6 MS. MINOR: It is a staff document that  
7 has been submitted, transmitted by letter to the  
8 board of supervisors. And a board committee, it's  
9 the board committee on health and human services,  
10 conducted a hearing on this plan the end of  
11 September.

12 HEARING OFFICER VALKOSKY: Okay, but it  
13 has not been adopted by the board of supervisors?

14 MS. MINOR: It has not, as of yet, been  
15 adopted --

16 HEARING OFFICER VALKOSKY: Okay.

17 MS. MINOR: -- by the board of  
18 supervisors.

19 HEARING OFFICER VALKOSKY: The final  
20 question I have, and I'd like to refer you to page  
21 5, lines 21 to 24 of applicant's response, and the  
22 basic gist of the response is a contention that  
23 the City is the party that does not want to  
24 negotiate over cooling alternatives or other  
25 matters such as wastewater.

1           Is that a correct statement or would you  
2       care to comment on that statement?

3           MS. MINOR: It seems to us that the  
4       issue is that Mirant needs an agreement. And the  
5       way to get that agreement is to undertake  
6       negotiations with the policy makers at the Port,  
7       and ultimately for approval by the board of  
8       supervisors.

9           In the last several weeks the Mayor of  
10      San Francisco has directed the PUC of San  
11      Francisco to continue discussions with Mirant over  
12      the possibility of a hybrid cooling system.

13          If the hybrid cooling system were built  
14      Mirant would not require a license from the Port.  
15      It would require other agreements with other  
16      agencies and departments of the City and County of  
17      San Francisco.

18          But, in fact, the hybrid cooling  
19      proposal is not the proposal before you. The  
20      proposal before you, and the one that we're  
21      conducting evidentiary hearings on, is the once-  
22      through cooling system.

23          HEARING OFFICER VALKOSKY: No, I  
24      understand that.

25          PRESIDING MEMBER PERNELL: Am I to



1 understand, if I hear you correctly, the Mayor has  
2 expressed an interest in continued negotiations?

3 MS. MINOR: The Mayor has directed his  
4 staff to continue to meet with Mirant to talk  
5 about the possibility of hybrid cooling system.

6 PRESIDING MEMBER PERNELL: And so does  
7 that mean that those discussions weren't taking  
8 place?

9 MS. MINOR: There had been some initial  
10 discussions. There were no discussions in  
11 September. And it's my understanding that a  
12 meeting is scheduled for the 5th of November.

13 HEARING OFFICER VALKOSKY: Thank you,  
14 Ms. Minor. Okay, now, gentlemen, I assume, Mr.  
15 Rostov, since you've joined Mr. Ramo's motion,  
16 that Mr. Ramo is going to speak for both of you?

17 MR. ROSTOV: Yes, I was just going to,  
18 if I have one or two minutes, that would be fine.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. ROSTOV: -- with that.

21 HEARING OFFICER VALKOSKY: Okay. Mr.  
22 Ramo.

23 MR. RAMO: I am just speaking for my  
24 clients. If Mr. Rostov wants to continue to join  
25 in what I'm saying, that's --

1 MR. ROSTOV: Yes, I think that's the way  
2 to put it.

3 (Laughter.)

4 MR. RAMO: Members of the Committee,  
5 more than three years ago this project started  
6 with Southern Energy's first announcement on  
7 September 1, 1999, that it intended to repower its  
8 Potrero Power Plant. More than three years ago.

9 In May of 2000 and later in an amended  
10 AFC of August 2000 the company stated that the new  
11 unit was to be constructed wholly within the site  
12 of its existing facility. And that's in exhibit A  
13 at page 2-1.

14 After all this time we now know what the  
15 truth is. The truth is that they don't have site  
16 control. That they plan to build their cooling  
17 facilities where they don't own the site. And  
18 that the current proposal before you, as of today,  
19 is not feasible.

20 Now, we got a response from Mirant to  
21 these motions, and I think it's clear there's a  
22 number of uncontested facts that are before you.  
23 Number one, they plan to build their cooling  
24 facilities on land owned by what they describe as  
25 a competitor. That they want to build these

1       cooling facilities in an area under the  
2       jurisdiction of a coastal agency, BCDC, which has  
3       found that building facilities like this there are  
4       inappropriate, contrary to their policies.

5               Their reply, in talking about the  
6       negotiations with the City, talks about a  
7       potentially viable -- option. In three years  
8       they've secured no agreement with the City. And  
9       they virtually accused the City in their reply  
10      papers of dealing in bad faith. Those are all  
11      undisputed facts.

12             So what we got is their position is that  
13      a currently infeasible project that violates a  
14      regional agency's policy with no justification for  
15      an override, should continue to be the subject of  
16      extensive, time-consuming hearings and staffing on  
17      the part of your agency and your time.

18             Now, Mirant first makes a legal  
19      argument, and I'm going to address that. And then  
20      I want to get to what I think are the real policy  
21      considerations you have to consider. Because I  
22      think there's no doubt you have the discretion to  
23      continue to suspend. And frankly, you have the  
24      authority to terminate, given the facts before  
25      you. But we're not asking for that today.

1           The Legislature in 2000, when adopting  
2       amendments to Public Resources Code, made clear  
3       that they expected this Commission to conduct not  
4       only timely proceedings, but efficient  
5       proceedings. This Legislature has given the  
6       Commission sweeping authority by rule or action to  
7       carry out its duties under the code.

8           Section 25218(e) of the Resources Code  
9       is clear; you have broad, sweeping authority.  
10      That's the last time I'll say that to you. But  
11      you have that. And 25218.5 makes clear that that  
12      broad authority should be liberally interpreted.

13           So, by rule, the City has addressed  
14      this, the Commission has the power to continue,  
15      upon motion of any party or your own motion, and  
16      it has the power to terminate on the motion of any  
17      party or the Commission. I'm referring to both  
18      section 1203 on the continuance, and section 1720  
19      as determination.

20           Now, by case law, for years this  
21      Commission has recognized the mid-step between  
22      continuance and termination. That's suspension.

23           Whether it has been initiated by the  
24      staff, by the applicant, by intervenors. And I  
25      would cite the 1987 Bay Area Resource Recovery

1 project; the Rio Linda case; the Roseville case,  
2 which we addressed and cited in our pleadings; and  
3 the San Francisco Energy Company.

4 And we talked about the Roseville case  
5 because I thought that opinion from the Committee  
6 made clear what your policy considerations should  
7 be under this broad discretion you have.

8 Basically you should be efficient.  
9 That's what you said. Just what the Legislature  
10 said. And you shouldn't waste your time on  
11 projects that are not viable. You have plenty to  
12 do. Your staff's working hard. The way to be  
13 efficient is to focus on projects, as you put it,  
14 are viable.

15 So let's talk about how the discretion  
16 should be used here. First of all, the past  
17 Commission practice has been clear. If there's no  
18 demonstration that the project is practically  
19 feasible, at a minimum it should be suspended.  
20 And perhaps terminated.

21 I think the Bay Area Resource Recovery  
22 case is interesting to look at from '87. That was  
23 a case where the project depended on an agreement  
24 from the City of San Francisco. And the  
25 Commission waited, went through supervisor

1       hearings, and waited and waited, and finally the  
2       Commission said, you don't have a contract.  
3       There's no project.

4                 We went through this with the San  
5       Francisco Energy Company. It wasn't so clear as  
6       we went through that proceeding, but eventually  
7       became very clear that the whole project depended  
8       on site control. Site control is a key factor in  
9       deciding whether to approve a power plant. And  
10      they needed a lease from the Port. And what the  
11      Commission did in that case was condition its  
12      decision on getting that lease, and it suspended  
13      the proceedings at that point. It said,  
14      applicant, get your lease.

15                They never got the lease. The project,  
16      I think, in theory may still be hovering in some  
17      suspended state.

18                I think it's also site control -- in  
19      your regs. In appendix B of your regs you require  
20      information on who owns the property, and what's  
21      the relationship between the owner of the property  
22      and the applicant.

23                Well, why are those questions asked?  
24      Because you shouldn't be wasting your time hearing  
25      proposals when they don't own the site. And the

1 project's going nowhere. And the project is  
2 infeasible.

3 Now, in trying to evaluate what to do  
4 here, and as we initially stated in our papers, we  
5 were concerned that things were not going to  
6 change. There's no agreement after three years.  
7 A lot of time has passed. The Legislature expects  
8 decisions in a year; that can be extended by the  
9 applicant and the Commission. That's often  
10 appropriate.

11 We're into the third year from when they  
12 announced the decision to go forward. They were  
13 accusing their competitor of bad faith. That  
14 doesn't sound good to me. That doesn't sound like  
15 we're on the brink of a deal here that's going to  
16 resolve this problem.

17 The draft energy plan basically excludes  
18 unit 7 practically; it derates unit 3. I expect  
19 that plan to pass, but it's certainly fluid. We  
20 don't know what's going to happen.

21 And finally, Mirant's public posture  
22 also concerns me, frankly. Which publicly, and  
23 I'm not part of any private negotiations with the  
24 City, but publicly they haven't been willing to  
25 address the size of their facility. They haven't

1       been willing to accept the staff's suggestions on  
2       air quality mitigation. They haven't been willing  
3       to go with the staff's suggestion on the cooling  
4       system.

5               So, given the length of time, given the  
6       intransigent position, given the City's moving in  
7       a different direction, frankly I think you'd be  
8       entitled to consider termination. And if there's  
9       any legal doubt on your right to suspend, you  
10      certainly have a right to say to the applicant,  
11      we're terminating unless you agree to a  
12      suspension.

13             So I think you have the authority. At  
14      the same time we recognize that there's some  
15      unsettled matters here still. And we also  
16      recognize there's a real need to get a resolution  
17      in San Francisco about which way things are going  
18      to go. To get Hunter's Point shut down, and maybe  
19      we can also get unit 3 shut down if we really have  
20      a comprehensive energy program with a diversified  
21      portfolio.

22             The City's holding an election. That's  
23      a very important election. It's happening in a  
24      week. There's a proposition on that ballot that  
25      would extend public -- far beyond what the City is



1       doing. That's in play.

2               There is the energy plan. That's up for  
3 review. I expect it to get to the board of  
4 supervisors sometime next month. And, as counsel  
5 for the City has indicated, at least a meeting is  
6 planned between the City and Mirant.

7               But in the end what that tells me is  
8 that the whole design of the facility is fluid.  
9 It's in play. The feasibility is in play. It's  
10 not clear what proposal ultimately will be  
11 seriously brought before you for approval. We  
12 don't know that yet.

13              So here's our recommendation. As I  
14 indicated, termination may be appropriate.  
15 Suspension, I think, is fully within your  
16 discretion and authority. But I'm not so  
17 concerned with the word suspension. What I am  
18 concerned with is wasting all our time with  
19 hearings where the real business of solving this  
20 problem is between, frankly, the City and Mirant,  
21 with appropriate input from the public. That's  
22 where the solution has to come.

23              Whether you call it a suspension or a  
24 continuance, I think hearings ought to be halted  
25 right now. I think in three months this

1 Commission should have a prehearing conference in  
2 which it determines whether the applicant is going  
3 to be able to come forward to this Commission with  
4 a demonstration that site control is reasonably  
5 imminent.

6 In the meantime my suggestion is that  
7 the Commission urge the parties to continue to  
8 meet and confer.

9 For there to be a project whether it's  
10 Mirant's or some other project in this case,  
11 frankly two things have to happen. One is the  
12 City has to resolve where it's going on energy.  
13 There's going to be an election, supervisor  
14 positions are at stake. There's going to be an  
15 energy plan review. At some point the City has to  
16 be able to say to Mirant, we're going in this  
17 direction, we're going in that direction.

18 At the same time, Mirant has to get  
19 serious about its bargaining position. It has to  
20 be realistic about what it means to operate in  
21 southeast San Francisco. And what kind of  
22 constraints that requires.

23 The reason why we joined this motion is  
24 because we think to get the parties off the dime  
25 and get energies focused on the right thing

1       instead of the wrong thing, is the Commission has  
2       to send a clear message. A clear message is not  
3       sent by pretending everything's fine, we're just  
4       proceeding as we always do.

5               Suspension, I think, clearly  
6       communicates that. But a continuance with  
7       appropriate conditions that says come to us with a  
8       project that's feasible. Come to us with a  
9       project with site control. Come to us with San  
10      Francisco working with you instead of being a  
11      competitor. Or, if truly your project is contrary  
12      to the way San Francisco's going, why are we  
13      approving your project. It can't go.

14              So that's why we support the motion.

15      Thank you.

16              HEARING OFFICER VALKOSKY: Thank you,  
17      Mr. Ramo.

18              PRESIDING MEMBER PERNELL: I have a few  
19      questions. Mr. Ramo, you make a compelling case,  
20      as you always do, at least in the proceedings that  
21      I've been presiding over. So you tell us that we  
22      need to somehow get the City and Mirant together,  
23      and that's a Commission's charge. And I would beg  
24      to differ.

25              You also mentioned that the Legislature

1 has said that we need to be vigilant in getting  
2 plants sited, keeping all of the environmental  
3 concerns certainly in focus. Yet, you want us to  
4 delay.

5 And let me just tell you that one of the  
6 criticisms that the Energy Commission had back 18,  
7 24 months ago, was it takes too long to license a  
8 power plant.

9 One of the things that I have begun to  
10 do in my proceedings is if there's a delay I want  
11 some paper as to whose fault it is. And that has  
12 been, and so it's being documented.

13 But for us to be sitting here on the  
14 bully pulpit, so to speak, I don't think is a  
15 charge that the Commission has.

16 The other question I would have, though,  
17 is you know, let's hypothetically talk about  
18 suspending the plant, you know, waiting for the  
19 election, and, you know, waiting for San  
20 Francisco's energy plan.

21 And when we started these proceedings up  
22 on Potrero Hill there was all of this question  
23 about environmental justice. So, if we extend  
24 that time, allow these proceedings to just drag  
25 out, what is that doing for environmental justice

1 for the people on Potrero Hill?

2 When we have Hunter's Point still  
3 spewing, you know, pollutants into the air. I  
4 don't have those numbers. So that's a question in  
5 my mind.

6 Another one, I guess, is the Commission  
7 has a record of continuing with this process even  
8 if, and you mention the San Francisco case, even  
9 without site control. One of the things that's  
10 happening is this proceeding is on our docket and  
11 we need to be going forward. We can't put  
12 pressure on the City or Mirant to come to some  
13 type of deal. That's on them.

14 If we continue with our proceedings and  
15 the board of supervisors decides not to give them  
16 site control, then the project goes away. I mean  
17 I think there's history that tells us that.  
18 Certainly, you've cited that.

19 So, you know, I guess my concern and the  
20 concern of the Commission is reliability. And  
21 every time we come down to San Francisco to talk  
22 about this case, quite frankly the City has  
23 changed its position from an energy plan, from --  
24 the only consistent position is shutting down  
25 Hunter's Point. That's what I'm hearing.

1           And I know Mr. Smeloff will be here  
2       tomorrow, but the last time he was before this  
3       Committee, you know, there was everything from  
4       switchyards to underground cables and piping. And  
5       so I'm just, you know, I'm a little bit  
6       frustrated, I guess, because the City needs to  
7       make up its mind what direction it's going to go  
8       in, and not put that on the Committee.

9           If the City wants a energy plan and they  
10      got something on the ballot and that's why, and I  
11      don't see how suspending the proceedings is going  
12      to prevent you from doing that, prevent the City  
13      from having the election, having the board of  
14      supervisors review the plan.

15          But the more delay, the more pollution  
16      for the residents of Hunter's Point. And I'm  
17      just -- and the reason I'm mentioning this because  
18      when we went up there, we got beat up verbally  
19      about environmental justice in Hunter's Point.

20          I don't hear those types of topics  
21      coming up at all in this proceedings. At least  
22      over the last, I don't know, three or four days  
23      we've been down here doing this.

24          So, I would just urge you to think about  
25      environmental justice for those that are up there.

1 If Hunter's Point is the issue, then let's figure  
2 out how to do that. You can't shut down Hunter's  
3 Point and number 3 or 4 on Potrero and expect to  
4 have reliability.

5 So, you know, sure, I would agree that  
6 it's on the Committee to decide in terms of either  
7 suspension or elimination. But there are other  
8 factors and there are people involved that we must  
9 consider. And you brought that to our attention.  
10 So I just don't want you to forget that fact.

11 MR. RAMO: Well, --

12 MS. MINOR: Commissioner Pernell, did  
13 you want the City to address your comments or  
14 concerns? I know this is a motion as opposed --

15 PRESIDING MEMBER PERNELL: Well, I'm  
16 sure the City will whether I want it to or not.  
17 I'm simply making the --

18 (Laughter.)

19 PRESIDING MEMBER PERNELL: -- I'm simply  
20 making the point that --

21 MS. MINOR: You were looking at both of  
22 us, so I just wanted to be clear.

23 PRESIDING MEMBER PERNELL: Well, I was  
24 addressing my comments to Mr. Ramo, and I guess,  
25 you know, you talked to me about environmental

1 justice and that we need to do something about  
2 Hunter's Point. But now you're saying delay,  
3 delay because the City doesn't exactly know which  
4 way it wants to go.

5 And, you know, the City can speak for  
6 themselves. I'm simply saying that we got  
7 criticized by the Legislature, even got a bill  
8 introduced and passed because it takes too long to  
9 do this. Too much regulations. I mean, you've  
10 heard it.

11 We're not trying to fast-track this in  
12 any way, but I certainly, without good cause,  
13 don't want to delay it. And that's just my  
14 opinion, as another member of the Committee. And  
15 I'm sure he will voice his opinion when the time  
16 comes.

17 MR. RAMO: Let me try to answer the  
18 compelling questions in response to my compelling  
19 presentation.

20 I don't think it does anybody any good  
21 at Hunter's Point to have hearings on an  
22 infeasible project. As soon as somebody says the  
23 emperor has no clothes, then we start dealing with  
24 the real dynamics, the real issues of reliability  
25 in that area. That's how we solve the people's



1 problems.

2 What I'm saying is we've got to find  
3 out, we've got to fish or cut bait right away --

4 PRESIDING MEMBER PERNELL: I would agree  
5 with that.

6 MR. RAMO: -- to figure out where we're  
7 going. And we need the --

8 PRESIDING MEMBER PERNELL: Now, wait a  
9 minute, let me stop you there. So when you say we  
10 need to figure out where we're going, who's we?  
11 Is it the City? Is it Mirant? Or is it the  
12 Commission?

13 MR. RAMO: Frankly, I think all three.  
14 And that's why I've called for suspension and not  
15 termination.

16 The Commission has a role. The  
17 Commission has overall state responsibility under  
18 the Legislature to assure reliability.

19 PRESIDING MEMBER PERNELL: Absolutely.

20 MR. RAMO: Right. The City has a role  
21 because they made the City have a role. They  
22 chose a project and proposed the project that  
23 required the City to agree. They're the ones who  
24 came up with the infeasible project.

25 So, now here's the City; and the City is

1 going through its own process, as a democratic  
2 body does, to come to fruition as to what its  
3 energy policy is going to be, and we're within a  
4 few months of that decision being made.

5 It may totally change the design of the  
6 project; it may mean that there's other projects  
7 that it would be far better to spend your time at.

8 If the response to the Legislature is  
9 you think we're stalling around, sitting around  
10 and not working hard, well, we're going to take  
11 every application and keep going and keep going  
12 and keep going no matter whether it bears any  
13 fruit or not.

14 I don't think that's going to get by the  
15 Legislature, either. At some point they may ask,  
16 you mean you knew this project was going nowhere  
17 and they brought it to your attention and you  
18 decided to spend more staff and more time going  
19 with that --

20 PRESIDING MEMBER PERNELL: But, Mr.  
21 Ramo, --

22 MR. RAMO: Let me just answer --

23 PRESIDING MEMBER PERNELL: Okay, I'm  
24 sorry. I'm sorry.

25 MR. RAMO: -- if I may, because you hit

1 me with a couple of questions.

2 PRESIDING MEMBER PERNELL: Okay, all  
3 right.

4 MR. RAMO: San Francisco Energy Company  
5 was a difficult case where there was a change in  
6 mayor near the end of the process, a mayor who had  
7 campaigned saying no more power plants in  
8 southeast San Francisco.

9 PRESIDING MEMBER PERNELL: Do you think  
10 that was a wise decision?

11 MR. RAMO: His campaigning on that? Or  
12 his change since then?

13 (Laughter.)

14 MR. RAMO: Well, in any event, --

15 PRESIDING MEMBER PERNELL: Okay, all  
16 right.

17 MR. RAMO: -- my only point there is to  
18 say that late in the game it became clear that  
19 there's a site control problem. Once it became  
20 clear, the Commission jumped on it and  
21 incorporated it. It was very late in the game.

22 The Bay Area Resource Recovery Facility,  
23 very early they realized they needed something  
24 from the City. They weren't getting it. They  
25 suspended it.

1           So I think it seems to happen every  
2       seven years that this Commission gets a proposal  
3       dependent on the City. And lo and behold, there's  
4       no agreement with the City. As soon as the  
5       Commission realizes it, it puts a stop to it.

6           Now, in terms of your authority, I  
7       agree. I suppose you can't ultimately handcuff  
8       the parties and force them into a room. But I  
9       think you can facilitate an attempt to resolve  
10      these things in a more effective way.

11          For example, you could hold a workshop.  
12      You could continue or suspend hearings. And make  
13      clear to the parties what we want to hear in the  
14      next prehearing conference is do they have site  
15      control. Do they have an agreement.

16          And that's going to tell everybody in  
17      the City, from the mayor to the board of  
18      supervisors, we realize at the Energy Commission  
19      that this thing is not going anywhere unless you  
20      come to agreement. You risk losing this project  
21      if you continue to take the position you do.

22          Maybe you want to lose the project.  
23      Maybe you have a better idea. Your energy plan.  
24      But there's some real consequences. We're aware  
25      of it. We're ready to move real quick when

1       there's a project that has site control. But we  
2       aren't going to move quick with a project that has  
3       no site control.

4               So, yeah, indirectly you will be putting  
5       some responsibility, I think, on the City. Also  
6       on Mirant. Mirant has to really think through if  
7       the City's going in a certain direction, is there  
8       a role for our company. Can we play that role.  
9       Realistically, what can be accepted by the City  
10      here, and is that to our interest. That has to be  
11      decided, too.

12             Sort of everybody spinning their wheels  
13      I don't think helps the people at Hunter's Point.  
14      Ultimately, if I represent some of the people who  
15      live in that community, we want Hunter's Point  
16      shut down. If there's a way to come up with a  
17      plan that one day gets rid of that old unit 3-2,  
18      which is 60 years old, great, too.

19             We want Hunter's Point shut down. And  
20      it's got to happen by there being other generation  
21      or other green alternatives that reduce demand.  
22      Something's got to give here. We need this  
23      resolved now or we're not going to get it shut  
24      down.

25             That's why I think a more dramatic step

1 is necessary to send that message. It's indirect,  
2 holding a workshop doesn't mean that people will  
3 come in good faith and talk. But holding a  
4 workshop is your pointing a path and making a  
5 statement.

6 Otherwise, simply holding hearings and  
7 having discussions about turbines and how  
8 efficient they are, I just can't believe that's  
9 the best use of your time.

10 PRESIDING MEMBER PERNELL: Well, two  
11 things, and then I'm done. I think that we're on  
12 the same page in terms of our resolve. The  
13 question is how do you get there.

14 And so let me ask you, you've indicated  
15 that San Francisco is going to have an election.  
16 We haven't decided when the next hearing is down  
17 here, but just for conversation, if that next  
18 hearing is after the election do you think San  
19 Francisco will have changed their energy direction  
20 as a result of the election?

21 MR. RAMO: I think, and I'm just one at  
22 this point, counsel for a group and an observer,  
23 and I haven't talked to my client about their  
24 views. My recommendation was to hold a prehearing  
25 conference in three months. I think by that time,

1 even with the slow ballot counting in the City of  
2 San Francisco, we will have results. There will  
3 be an impact from that election.

4 Secondly, we'll have a decision on the  
5 energy plan, which will set the parameters for San  
6 Francisco's approach to this project and other  
7 projects.

8 So, yeah, I think there will be  
9 significant movement. If, in the end, frankly, if  
10 San Francisco is still where they are today, this  
11 project's going nowhere because there's no site  
12 control. There's no agreement.

13 PRESIDING MEMBER PERNELL: Okay.

14 CHAIRMAN KEESE: I'll wait till we hear  
15 some of the others.

16 HEARING OFFICER VALKOSKY: Thank you,  
17 Mr. Ramo. Mr Rostov.

18 MR. ROSTOV: Yeah, just, I think, one or  
19 two points. And my point's on environmental  
20 justice. I think many people wouldn't think the  
21 environmental justice outcome was good if we just  
22 substituted the old Hunter's Point Power Plant for  
23 the Potrero Power Plant.

24 And one of the main reasons the City is  
25 having problems -- or not having any problems, but

1 one of the main reasons the City is so resolved in  
2 not giving site control to unit 7 is because of  
3 the environmental justice concerns.

4 And now the City has come up with an  
5 energy plan that may solve some of the  
6 environmental justice concerns. At the same time  
7 it will be able to eliminate Hunter's Point and  
8 not build as much generation in the City. And I  
9 think many people will believe that will be more  
10 of a solution that more fits the principles of  
11 environmental justice. And it's also had a much  
12 more public participation.

13 The problem with this process so far is  
14 that we're talking about a project that's really  
15 removed from the public being able to participate.  
16 And now we're talking about a project where it  
17 might not happen because there's no site control.

18 So that's very far removed from these  
19 goals of having people participate and making  
20 decisions about their environmental future.

21 And I think from an environmental  
22 justice perspective what you would do is suspend  
23 it and see if the public can work out a better  
24 solution. But the City is not going to give site  
25 control on the theory that replacing Hunter's



1 Point for unit 7 is an environmental justice  
2 solution. Because the people of San Francisco  
3 don't think that. They think there's probably a  
4 better solution that doesn't involve unit 7, and  
5 that will create environmental justice.

6 PRESIDING MEMBER PERNELL: All right,  
7 how long do you think it would take for the energy  
8 plan to get built out? Knowing that the only way  
9 you shut down Hunter's Point is that there is a --  
10 because there's a reliability question, not just  
11 from this Commission, but from all of the energy  
12 experts in the San Francisco Peninsula.

13 How long do you think it would take to  
14 build out the energy plan that you're referencing?

15 MR. ROSTOV: Well, my understanding of  
16 the energy plan is that they have short-term and  
17 long-term goals. And their short-term goals will  
18 deal with reliability issues.

19 But I think the reason some community  
20 groups are interested in the energy plan is  
21 because it allows the community to participate and  
22 help develop their energy future in a way that  
23 this proceeding does not. And in a way that  
24 building unit 7 would not, as well. Because unit  
25 7 would create this monster that would really

1 eliminate a bunch of choices that are now  
2 available.

3 Because there would be so much  
4 generation, as Ms. Zambito testified this morning.  
5 There would essentially be so much generation and  
6 efficient project, that there'd be no other  
7 choices. Mirant would essentially have a  
8 monopoly.

9 PRESIDING MEMBER PERNELL: All right, so  
10 you don't have an idea of how long it would take  
11 to build out the energy plan, or whether all of  
12 those assumptions will even come to fruition?

13 MR. ROSTOV: I don't think I'm the right  
14 person to ask. I think that would be better for  
15 Mr. Smeloff.

16 PRESIDING MEMBER PERNELL: Okay. Last  
17 question. And you are comparing unit 7 to the 40-  
18 year-old Hunter's Point unit, saying you're only  
19 removing, taking out one unit and replacing it  
20 with another pollutant, so you're not doing  
21 anything for environmental justice.

22 Is your understanding that the unit 7  
23 will have the same amount of pollutants as  
24 Potrero?

25 MR. ROSTOV: It depends on how you look

1 at it --

2 PRESIDING MEMBER PERNELL: Hunter's  
3 Point, I'm sorry.

4 MR. ROSTOV: Unit 7 is going to be 540  
5 megawatts, so even though it's more efficient in  
6 the sense that there would be less pollution per,  
7 whatever you want to call it, Btu or something,  
8 still when you look at the gross 540 megawatts,  
9 yes, there's going to be 110 tons of particulate  
10 pollution and other pollution that's already going  
11 to impact the community that's heavily impacted by  
12 pollution as it is.

13 So, when you look at it from that  
14 perspective, concentrating this other big source  
15 of pollution in that community, yes. I mean it is  
16 a big problem just switching one for the other.

17 That's why everybody, I think, from the  
18 community perspective is more working with the  
19 City trying to develop a plan or different  
20 alternatives where we can reduce pollution at the  
21 same time as achieve reliability.

22 And I think Mr. Ramo was correct in  
23 arguing that the best way to send a message to  
24 everybody is to say we need to suspend this  
25 proceedings for awhile and get serious about

1       what's really happening in San Francisco, about  
2       the reality of what's going on in San Francisco.

3               And the reality is there's organized  
4       people who are saying we don't want unit 7, and we  
5       don't want Hunter's Point. We need to do  
6       something different. The City's moving in that  
7       direction. And the people of San Francisco are  
8       going to keep moving in that direction.

9               And that's just the reality.

10              PRESIDING MEMBER PERNELL: All right,  
11       I'm not going to argue with residents of San  
12       Francisco. I'm simply saying that in terms of  
13       reliability, there needs to be, I think, for the  
14       health and safety of San Francisco, a reliable  
15       energy source that is not speculative. That's my  
16       one person's opinion.

17              MR. ROSTOV: Right, and --

18              PRESIDING MEMBER PERNELL: And with  
19       that, I mean I'll stop.

20              MR. ROSTOV: I mean I think we all agree  
21       that there needs to be a reliable source, but, I  
22       mean, as the testimony tomorrow is going to be an  
23       example, nobody's sure that unit 7 is going to be  
24       that reliable source.

25              And there's probably -- there are better

1 alternatives that would create the reliability and  
2 also reduce your pollution. And that's what we're  
3 advocating.

4 PRESIDING MEMBER PERNELL: Okay.

5 CHAIRMAN KEESE: Well, I will make one  
6 comment. I think, as we heard a little indication  
7 this morning, if one owns a 6700 heat rate power  
8 facility and a 10,000 heat rate power facility,  
9 you run the 6700 first.

10 In fact, my hope for the market in the  
11 next five years is that every unit that runs at  
12 10,000 is out of service and is not polluting  
13 across the state.

14 But we can't get there until we have  
15 enough substitute. And Robert and I both are very  
16 strong advocates of everything that can be done in  
17 the alternatives, wind, biomass, solar, whatever  
18 it is.

19 Robert spend a whole lot of time this  
20 last year getting those subsidies out to get the  
21 renewables out as fast as they could to get  
22 started.

23 We also understand the practicality and  
24 the timeframes of these activities. As I say, I  
25 would hope in five years that we had enough power

1 plants to shut down every 10,000 heat rate plant.  
2 We're probably not going to make that in five  
3 years. I don't know how much longer we will.

4 Reliability also is better when you have  
5 a new plant than when you have one that's 40 or 50  
6 years old, which you just may not have if you have  
7 an incident.

8 My mind is open on this. I will say my  
9 inclination, I think, goes along with you. Why  
10 should we have a hearing on a subject that is  
11 totally speculative. Let's talk about water, why  
12 should we have a hearing on water when we have no  
13 idea what the water plan is, as an example.

14 So I would tend to think that we  
15 wouldn't go forward. We have not discussed this.  
16 I would tend to think that we would not go forward  
17 on issues that weren't reasonably clear to us.

18 We might go forward on issues where we  
19 don't need to see a path to the future yet. But,  
20 we will discuss this after were done here hearing  
21 from all the parties on these motions.

22 HEARING OFFICER VALKOSKY: I would just  
23 note for the record that it certainly has been the  
24 Committee's intent in the hearings we've held thus  
25 far to address those issues which are essentially

1 static issues in the sense that they're unlikely  
2 to change regardless of what happens in the  
3 future.

4 With that, Mr. Westerfield, or Mr.  
5 Ratliff.

6 MR. RATLIFF: Dick Ratliff for staff.  
7 The staff neither supports nor opposes the motions  
8 of the various parties.

9 Having said that, I think the staff is  
10 uncomfortable and discontented about the subject,  
11 because we feel like we have a plan which is -- or  
12 a proposal which we have informed the world that  
13 we do not support in our FSA.

14 We have said that we think the proposal  
15 should be changed in terms of the cooling system  
16 before it should be licensed. And frankly we  
17 believe that it probably could not be either  
18 licensed or built in its current form.

19 We think that there is, from what I've  
20 heard today, agreement at least among the Energy  
21 Commission Staff, the applicant and the City, that  
22 there is a need for generation in San Francisco.  
23 We would like to support a proposal for  
24 generation.

25 We would hope that this project would be

1 amended to be one that we could support. And we  
2 very strongly would hope that that amendment would  
3 occur before we go to hearings on issues that  
4 would be required to be re-heard if the amendment  
5 comes subsequently.

6 So, that is really the kind of  
7 difficulty the staff feels about this. But we're  
8 willing to go to hearing whenever the Commission  
9 believes that it wants us to.

10 Finally, a couple of other corollary  
11 points have come up today with regard to your  
12 authority to suspend. In my view it is clearly  
13 within your authority and your discretion to  
14 suspend the case. We think that it is futile to  
15 continue with an implausible proposal.

16 On the other hand I think the question  
17 has come up about whether you've done so in the  
18 past. And I don't believe that the Commission has  
19 ever suspended a case on the grounds that there  
20 was not site control.

21 We have, I believe, and counsel for SAEJ  
22 and myself both think we recollect the facts  
23 regarding SFEC, but perhaps we interpret them  
24 differently. I believe in that case the  
25 Commission went to a favorable conclusion on that



1 license. It did not docket the license to avoid  
2 the necessary litigation that would be premature  
3 in the absence of site control.

4 Likewise, we recently licensed a power  
5 plant at the Airport called Golden Gate in San  
6 Francisco that did not have site control. I'm not  
7 saying that this was the best thing to do or the  
8 best policy, but we have licensed projects where  
9 site control was incomplete, where it was still  
10 possible, and we didn't know what the outcome  
11 would be.

12 And that concludes my remarks.

13 HEARING OFFICER VALKOSKY: Mr. Ratliff,  
14 is it your understanding that at least in the most  
15 recent incident, the Golden Gate case, the record  
16 had developed to the point before the decision was  
17 released where all parties were highly optimistic  
18 that agreement would, in fact, be reached. And  
19 that the matter of site control was ministerial or  
20 just a little more than ministerial in nature?

21 MR. RATLIFF: Well, we thought it was  
22 necessary, but, yes, we were told by the City, by  
23 the Airport and by the applicant that an agreement  
24 was imminent during the course of that case. In  
25 fact, that was the consistent message throughout

1 the case.

2 It was only after the license was  
3 granted that we were told that it was hung up; and  
4 then later that there would be final resolution.

5 HEARING OFFICER VALKOSKY: Right. And  
6 would you agree that the consistent message in  
7 this case is somewhat different?

8 MR. RATLIFF: Yes. Most definitely.

9 HEARING OFFICER VALKOSKY: Thank you.

10 PRESIDING MEMBER PERNELL: Mr. Ratliff,  
11 it was staff understanding that at least on the  
12 Golden Gate case that the City and all of the  
13 parties assumed that there would be site control?

14 MR. RATLIFF: I don't know if everyone  
15 assumed there would be site control, but we  
16 thought that most likely there would be site  
17 control because the City's -- I think it's fair to  
18 say that what the City's expression was, the  
19 expression of their own view was that they felt  
20 that it was just a matter of working out the  
21 details of the final agreement. And that there  
22 was no opposition, politically or otherwise, to  
23 completing that agreement.

24 PRESIDING MEMBER PERNELL: So, without  
25 getting into the merits of that case, do you have

1 any idea what the sticking point was?

2 MR. RATLIFF: I could only speculate and  
3 I really would prefer not to.

4 PRESIDING MEMBER PERNELL: All right,  
5 I'll withdraw my question.

6 MR. RATLIFF: Okay.

7 HEARING OFFICER VALKOSKY: Thank you,  
8 Mr. Ratliff. Mr. Carroll.

9 MR. CARROLL: Thank you. As a  
10 preliminary matter let's be clear about what the  
11 intervenors are asking for. We've bounced back  
12 and forth between continuation and suspension.  
13 And some of the parties, I think, have been quite  
14 forthcoming about what the nature of the relief is  
15 that they're asking for. Other parties have  
16 couched the nature of the relief, I think, in an  
17 attempt to shoehorn it into the authority that  
18 this Commission has.

19 But it's clear on the face of the  
20 requests that what is being asked is a suspension  
21 of hearings. Continuation, general understanding  
22 of continuation and the very specific references  
23 to continuation of hearings in your regulations  
24 make it clear that is to serve a limited purpose.  
25 That is to continue a previously scheduled hearing

1 from one date to another date without having to  
2 renote the hearing. That's very clear and it's  
3 from the regulations; and it's also, I think, the  
4 general understanding of what is meant to continue  
5 the hearing.

6 What's being asked for is a suspension  
7 of all future hearings. In other words, that the  
8 Committee not set any additional hearings in the  
9 future until some unspecified period in the  
10 future.

11 We think that's very different from  
12 continuation. We recognize your authority to  
13 continue hearings, but we do not believe that the  
14 requests for suspension of hearings fit within the  
15 authority that you have.

16 So, with all due respect to this  
17 Committee, we do not believe that you have the  
18 authority to grant the requested relief.

19 With respect to the merits of the  
20 motions, since the filing of the motions we  
21 believe that the first two bases that were  
22 mentioned in the City's written motion have been  
23 rendered moot. And we haven't spent much time  
24 talking about them. And I won't spend much time,  
25 either.

1           But let me simply say that with respect  
2           to the proposed amendments to the final  
3           determination of compliance, Mirant did submit a  
4           request to the Air District. I apologize, I would  
5           have anticipated that it would have been received  
6           by the parties. I don't remember the exact date  
7           last week that it was sent to the Air District and  
8           docketed and served. But you should all receive  
9           it very soon.

10           We think, and it sounds like the City  
11           agrees, that that renders that bases moot. I will  
12           say, as an aside, it's very unfortunate that we  
13           had to do that. That a proposal to cut emissions  
14           by 40 percent from the project needed to be  
15           withdrawn because parties saw fit to engage in a  
16           strategy of using that gesture on behalf of the  
17           applicant to delay the project.

18           So we were very enthused when we filed  
19           the amendment. We were very disappointed to have  
20           to withdraw it. But we've withdrawn it. So that  
21           issue is behind us.

22           With respect to the single contingency  
23           issue, I think since filing of the motion, the ISO  
24           has made its position very clear, and we will  
25           presumably hear more about it tomorrow. It is

1       what it is. It's the ISO's position on that  
2       particular issue.

3               The parties are free to agree with it,  
4       disagree with it, draw whatever conclusions they  
5       might want to from it; argue that the project is  
6       inappropriate in light of it. But it's simply a  
7       piece of evidence that the ISO is putting into the  
8       record. And we don't think that there's an  
9       obligation on the part of the applicant to resolve  
10      all points of disagreement with any agency that  
11      might comment on a project, as a condition of  
12      moving forward with evidentiary proceedings.

13              Quite to the contrary, we think one of  
14      the purposes of the evidentiary proceedings is for  
15      the Committee to hear the viewpoints of all the  
16      parties, consistent and inconsistent, and then  
17      make a determination on its own, based on the  
18      evidence that it hears.

19              So, the issue's been resolved as far as  
20      what is the ISO's position. And, as I said, it is  
21      what it is. And it's a piece of evidence in these  
22      proceedings. And we don't see any reason to  
23      suspend further evidentiary hearings based on that  
24      determination by the ISO.

25              With respect to what really is the heart

1 of the matter here, the license agreements for the  
2 once-through cooling system, let's be very honest  
3 about what we're talking about here.

4 This issue has been framed at certain  
5 points during the discourse as though Mirant were  
6 negotiating with some third party for site  
7 control. And the City has said, come to us with  
8 site control, come to us with site control. The  
9 City is the entity from which we need the site  
10 control.

11 And the suggestion that if you were  
12 serious about site control you'd be negotiating  
13 the licensing agreement, well, we were there. And  
14 if the City really believes that, we would ask  
15 them to respond to the draft license agreements  
16 that we provided to the City Attorney's Office,  
17 the same office that brought this motion, many  
18 many months ago.

19 We negotiated a cost reimbursement  
20 agreement with the Port. We negotiated an  
21 agreement to hire an independent third-party  
22 environmental consultant to review the license  
23 agreement. We provided draft license agreements  
24 to the Port. And the Port did not respond.

25 And when I say the Port, I mean the City

1 of San Francisco, and specifically the City  
2 Attorney's Office, who's responsible for  
3 negotiating that agreement on behalf of the Port.

4 Let's also be honest about why we, as  
5 the applicant, haven't aggressively pursued that  
6 lack of response from the Port over the last six  
7 months. The reason that we haven't is because  
8 we've been engaged in a good faith effort to  
9 explore alternatives to the once-through cooling  
10 system in response to concerns that have been  
11 raised by a number of entities, including the City  
12 of San Francisco, with respect to impacts on the  
13 Bay.

14 And so the suggestion that Mirant has  
15 buried its head in the sand, or dug its heels in,  
16 or whatever phrase we want to use with respect to  
17 the once-through cooling, and has refused to  
18 consider alternatives is not true. And I'll tell  
19 you today that the project applicant is prepared  
20 to modify the cooling system on this project to go  
21 with the staff proposal. A hybrid cooling tower  
22 with plume abatement using gray water from the  
23 City's wastewater treatment plant. If the City  
24 will come to the table and negotiate arrangements  
25 for us to receive gray water from the City.



1           Unfortunately, the alternative that the  
2       staff would like us to go to doesn't get us out  
3       from negotiating with the City. Because now we  
4       don't need licenses from the Port, but we need an  
5       agreement for them to deliver gray water to the  
6       facility.

7           We have a meeting set on November 5th.  
8       I'm hoping that that's a productive meeting. And  
9       that it leads to an agreement.

10          But let's be clear about why we don't  
11       have a license agreement from the Port. And why  
12       we haven't been pursuing a license agreement from  
13       the Port. It's because we've been responding to  
14       what the community has said, what the agencies  
15       have said, what your staff has said about an  
16       alternative.

17          But we can't implement the alternative  
18       by ourselves. And we need the City to come to the  
19       table and work with us on it.

20          Mirant has always acknowledged that in  
21       order for this project to move forward that we and  
22       the City need to come to terms on the cooling  
23       system. We're not naive about that; we're not  
24       being Pollyanna-ish about it. We've acknowledged  
25       it from the very beginning.

1           Coming to terms with the local  
2           jurisdiction which can be problematic and has been  
3           problematic for this Commission in other cases,  
4           has been particularly difficult in this case  
5           because we believe the staff representing the  
6           local jurisdiction is simultaneously pushing a  
7           public power plant that does not include unit 7.

8           So, while issues between the local  
9           jurisdiction and the applicant are not uncommon,  
10          this one is particularly thorny, given the  
11          somewhat conflicting interests of the City.

12          We've expressed great reservations about  
13          liability of the City's proposed energy plan.  
14          Those concerns have been intensified in recent  
15          weeks as the exact status of the plan has come  
16          into question. And I know we're not here to talk  
17          about that today.

18          You may or may not agree with our  
19          concerns about the energy plan. You may not have  
20          the desire or think you have the authority to wade  
21          into evaluating the merits of the City's staff's  
22          proposed energy plan relative to unit 7. We think  
23          that's okay. But what we think you must do is to  
24          continue to proceed with unit 7.

25          Whether you want to make the policy call

1 or not as to whether unit 7 should be in the  
2 City's plan, what is incumbent upon you is to make  
3 sure that unit 7, appropriately reviewed and  
4 appropriately conditioned, is available as an  
5 element of the City's future plan.

6 Should we be right, should Mirant be  
7 right about what it's saying about the need to  
8 have unit 7 as part of the City's long-term energy  
9 strategy, that project needs to be poised to move  
10 forward. And it's incumbent upon this Commission,  
11 we believe, as the entity with sole jurisdiction  
12 over insuring that adequate generation facilities  
13 are built in the state, to make sure that that  
14 project is poised to move forward.

15 The question then becomes how do you do  
16 that. And I actually agree with much of what Mr.  
17 Ramo said, that what needs to happen here is for  
18 the City and Mirant to come together.

19 What I would suggest, however, is that  
20 suspension of these hearings will make it less  
21 likely that the parties will come together. That  
22 the pressure that the hearing process brings to  
23 bear, by moving the project incrementally forward,  
24 eliminating extraneous issues, bringing the real  
25 issues into focus, forcing the parties to think

1 about it and to prepare to come to hearings,  
2 increases the likelihood that the parties will  
3 have dialogue and that the issues will ultimately  
4 be resolved.

5 We have a meeting, as we said, on  
6 November 5th, to talk about the cooling system.  
7 If we were not engaged in these hearings I don't  
8 think that meeting would be happening. If we  
9 weren't engaged in, albeit, a very protracted  
10 process here, but the pressure that the continued  
11 hearings have had, I think, has been very  
12 instrumental in bringing the parties together.  
13 And will continue to be very instrumental in  
14 bringing the parties together to resolve their  
15 issues. And I think that the suspension of the  
16 hearings will make that less likely to happen.

17 We appreciate the dilemma and the  
18 concerns about spending time on a subject or topic  
19 where the underlying facts may change. And it  
20 would be ideal if we could only proceed with  
21 evidentiary hearings when all of the major  
22 underlying issues are resolved.

23 We seldom have an ideal situation and we  
24 certainly don't have an ideal situation here.  
25 But, what we would ask is that the Committee take

1 advantage of the inherent leverage that you have  
2 with the hearing process to force the City to the  
3 table to talk to Mirant about a viable option for  
4 getting gray water to the power plant from the  
5 City's wastewater treatment plant so that we can  
6 make the changes to the project that all of you  
7 have asked us to make. And to come back here with  
8 a project that certainly while not everybody will  
9 be happy with, many more people than are currently  
10 happy would be happy with.

11 Specifically, we would request that you  
12 continue to schedule evidentiary hearings. Again,  
13 on what I think we all need to admit has been a  
14 relatively leisurely pace that's unlikely to  
15 significantly task any of our resources, but that  
16 you continue to set hearings on about the pace  
17 that we've been having them. Again, focused on  
18 the topics that are unlikely to be affected by any  
19 changes in the project.

20 And that you further direct the City and  
21 Mirant to continue their discussions on the gray  
22 water proposal and the alternative cooling system.  
23 And submit periodic reports back to you on the  
24 progress of those discussions.

25 In my view and in our view we think that

1       that is the most likely path to lead to  
2       resolution. And, if, at the end of the day this  
3       project doesn't go forward, and if the City's  
4       demonstrated anything over the last 15 or 20  
5       years, they've demonstrated they know how to kill  
6       a project, so at the end of the day this project  
7       may not go forward.

8               But if that happens it should be clear  
9       to everybody that the reason the project didn't go  
10      forward was because the City decided that it  
11      didn't want the project here. Not that the  
12      Commission didn't finish its review and approval  
13      of the project, appropriately conditioned.

14             What the City hasn't proven itself to be  
15      particularly good at is developing and  
16      implementing alternatives. And as a result of  
17      that, having killed a number of projects along the  
18      way, the citizens continue to suffer with the  
19      existing generation that's been here for years and  
20      years.

21             We think that perhaps the time has come  
22      when the broader San Francisco community would not  
23      turn its back on a project, again appropriately  
24      conditioned and certified by this Commission,  
25      notwithstanding the views of some within the City

1 Staff.

2 And we'd ask you to proceed. Thank you  
3 very much.

4 PRESIDING MEMBER PERNELL: A couple  
5 questions. On your FDOC and on the amendment you  
6 mentioned emissions that would be 40 percent less.  
7 And so what you're doing is withdrawing your  
8 amendment to create that less emissions?

9 MR. CARROLL: What we had proposed to  
10 do, and what we, in fact, did was submit a  
11 requested amendment to the FDOC, which would have  
12 reduced the allowable emission limits from the  
13 project by about 40 percent. I don't recall the  
14 exact numbers, they varied from pollutant to  
15 pollutant, but it was about a 40 percent  
16 reduction.

17 We thought we were doing a good thing.  
18 We still think that we did do a good thing. But  
19 we can't have that good thing stand in the way of  
20 the project. And so if there are parties who  
21 believe that having done that good thing means  
22 leading to suspend or delay the hearings, then we  
23 won't be able to do it.

24 So what we've done is withdrawn the  
25 request, so the limits would stay exactly as they

1 are. The FDOC is intact, duly issued, and this  
2 Committee can proceed.

3 PRESIDING MEMBER PERNELL: Do the  
4 Committee -- I'm not even sure, maybe I need to  
5 defer to Mr. Ratliff here, but you mentioned the  
6 license agreement that you proposed to the Port of  
7 San Francisco. Is that public information or is  
8 that proprietary?

9 MR. CARROLL: I don't know that I would  
10 describe it as proprietary. I guess to the extent  
11 that it represents the commencement of  
12 negotiations between us and the Port, I wouldn't  
13 necessarily want it to be a public document.

14 But if this Committee thought it was  
15 important to see that, or to see evidence, it  
16 exists. I think we could provide --

17 PRESIDING MEMBER PERNELL: Well, maybe  
18 after November 5th. I mean what I'd like to do is  
19 give all of the parties an opportunity to, you  
20 know, to meet and confer in good faith. But at  
21 some point I would think that if it's not moving I  
22 would be interested in seeing it.

23 MR. CARROLL: And what I would say is as  
24 we have believed over the last four or five  
25 months, I think our efforts in the near term are



1 better focused on the alternative and seeing if  
2 there's something can be worked out.

3 If it can't, we're back at the once-  
4 through. We need a backup plan in the event that  
5 an alternative cooling system can't be  
6 accomplished because we can't reach an agreement  
7 with the City on the gray water, for whatever  
8 reason.

9 But in the near term I'd like to see us  
10 focus our efforts on the alternative that seems to  
11 have broader support.

12 PRESIDING MEMBER PERNELL: Which is the  
13 hybrid cooling system?

14 MR. CARROLL: Correct.

15 CHAIRMAN KEESE: Mr. Carroll, it sounds  
16 to me like you're somewhat agreeing that if an  
17 issue has not terminated -- if an issue is not  
18 ready you can understand us not taking it up.

19 MR. CARROLL: Yes.

20 CHAIRMAN KEESE: But if an issue is  
21 ready then you see no reason not to go forward?

22 MR. CARROLL: Yes, sir.

23 CHAIRMAN KEESE: Is that --

24 MR. CARROLL: Yes, sir, that's --

25 CHAIRMAN KEESE: -- so in a way you're

1 half agreeing -- you're disagreeing with the use  
2 of the term suspension, but you're not disagreeing  
3 with the principle of not going forward on issues  
4 that are not gelled enough to be discussed here?

5 MR. CARROLL: Yes. Let me use an  
6 example. I mean we have no desire to spend your  
7 resources or our resources conducting hearings at  
8 this point on aquatic biology or an area such as  
9 that.

10 On the other hand, we think that we can  
11 effectively and efficiently continue to move  
12 forward as we have been over the last three sets  
13 of hearings, including this set, on topics that  
14 are not so affected by the cooling system or not  
15 affected at all by the cooling system.

16 CHAIRMAN KEESE: Then may I ask you a  
17 question you can choose to not answer, if you'd  
18 like, and that is with your withdrawal of your  
19 change in your emissions permit, would you suggest  
20 that that's a subject that we might want to delay?  
21 That something might change on that sometime in  
22 the future if other resolutions took place?

23 MR. CARROLL: I think air quality  
24 actually falls somewhere in the middle. It is not  
25 a --

1 CHAIRMAN KEESE: That's good enough.

2 MR. CARROLL: Okay.

3 HEARING OFFICER VALKOSKY: Mr. Carroll,  
4 would you explain to me a little bit why, under  
5 our reg section 1203(c), which empowers the  
6 Committee to, quote, "regulate the conduct of the  
7 proceedings and hearings" close quote, and then it  
8 goes: including, but not limited to, various  
9 tasks, why you believe that the power to suspend  
10 is not encompassed in that phrase? To regulate  
11 the overall conduct of the hearings -- of the  
12 proceedings?

13 MR. CARROLL: Well, I think regulating  
14 the conduct of the proceedings and deciding not to  
15 have any proceedings are two different things. I  
16 think you have very broad discretion to regulate  
17 the conduct of the proceedings. But I don't think  
18 that extends to a decision that you're simply not  
19 going to have any further proceedings.

20 HEARING OFFICER VALKOSKY: I'm not  
21 talking about terminating. I mean my reaction to  
22 your characterization if we're not going to have  
23 any more hearings, that's a termination. That's  
24 the end of the case.

25 No, I'm talking about a suspension in

1 the sense that okay, everybody take a breather for  
2 the next two, three, six, eight months, whatever  
3 it is. That's the kind of situation.

4 MR. CARROLL: And I guess in my view  
5 that falls in the same category. Whether you're  
6 talking about termination, so that it's a  
7 permanent discontinuation of the hearings, or  
8 whether you're talking about suspension, so that  
9 it's a sort of indefinite, not necessarily  
10 permanent, suspension.

11 That in both of those cases you've  
12 essentially decided that for the foreseeable  
13 future there won't be any proceedings. And I  
14 think that goes beyond regulating the conduct of  
15 the proceedings.

16 HEARING OFFICER VALKOSKY: Okay, for the  
17 foreseeable future. Now, how about if it were a  
18 time-certain period?

19 MR. CARROLL: Well, I think as a  
20 practical matter that's what we have been doing  
21 all along. We have been, for all intents and  
22 purposes, in, I suppose if you want to call it a  
23 suspension, for the last two and half months.

24 So, you know, if you were to continue  
25 scheduling the hearings on the timeframes that we

1 have, so, you know, I would assume that that would  
2 mean sometime in December we would be back here to  
3 talk about some additional topics. We wouldn't  
4 object to that.

5 Now, that does have a pretty decent lag  
6 time in there. And if you want to call that a  
7 suspension, then I guess that's okay. I mean  
8 we're okay with proceeding, as I said, along the  
9 lines of what we've been doing to date.

10 HEARING OFFICER VALKOSKY: Okay, now  
11 that's something clarified, at least, what I  
12 believe is the agency perspective. And  
13 suspension, -- okay. Ways of doing it,  
14 termination is essentially the end of the case.  
15 It's withdrawn, the docket is closed and  
16 everything else.

17 Suspension is that status wherein the  
18 Committee is not moving forward on anything and,  
19 to a large extent, the case has fallen to the  
20 bottom of staff's workload pile. At least that's  
21 my understanding of suspension.

22 An active case, although I must admit,  
23 the activity is a bit relaxed, but it nevertheless  
24 is active, is the situation we're in right now.  
25 Okay.

1                   So, just to keep that in perspective.

2                   So, given that, I take it your position is that  
3                   you do not want a suspension even for a time  
4                   certain, a brief duration of a couple three  
5                   months?

6                   MR. CARROLL: That's correct.

7                   HEARING OFFICER VALKOSKY: Okay, thank  
8                   you. Okay, given the inability so far to achieve  
9                   any agreement with the Port, do you believe that  
10                  the project, as currently proposed, is viable?

11                  MR. CARROLL: I believe that it is  
12                  viable. I acknowledge that there's a site control  
13                  issue that needs to be resolved. But I don't  
14                  believe that that is an insurmountable issue. So  
15                  I believe that the project, even as proposed with  
16                  the once-through cooling, is a viable project.

17                  HEARING OFFICER VALKOSKY: Okay, but  
18                  would you agree that you would need a land use  
19                  entitlement agreement, lease, whatever, with the  
20                  Port in order to build the project as proposed?

21                  MR. CARROLL: What I would say in  
22                  response to that is that is the basis upon which  
23                  we have been proceeding. I reserve the right, at  
24                  some point in the future, to take a contrary  
25                  position, because there is a contrary position out

1       there.

2               Mirant currently does hold, as successor  
3       in interest to PG&E, license agreements for the  
4       existing intake and outfall. Those existing  
5       agreements do provide for modifications to take  
6       place.

7               One approach that Mirant could take,  
8       it's sort of the hard-nosed litigator's approach,  
9       is that we have the rights that we need and we're  
10      proceeding to modify the existing intake and  
11      outfall. And that that modification is within the  
12      parameters of the existing license agreements.

13              We haven't taken that approach, but that  
14      would be an alternative approach. So, for  
15      purposes of our discussion and our negotiation,  
16      we've approached this on the basis that we would  
17      negotiate a new agreement with the Port and the  
18      City.

19              HEARING OFFICER VALKOSKY: But you do  
20      have a fall-back position --

21              MR. CARROLL: Yes.

22              HEARING OFFICER VALKOSKY: -- that you  
23      choose not to use? Okay.

24              You mentioned the applicant is willing  
25      to proceed with an amendment incorporating a

1        hybrid cooling system. Do you have any idea of  
2        how long it would take to prepare an amendment?

3                MR. CARROLL: I would say it would take  
4        us four to six weeks to prepare such an amendment.

5                HEARING OFFICER VALKOSKY: And that  
6        amendment would include all the topic areas  
7        directly affected by the change of cooling system?

8                MR. CARROLL: Yes. Keep in mind that  
9        may sound like an aggressive schedule. Keep in  
10       mind we've done a tremendous amount of that sort  
11       of work already in connection with all the  
12       discussions we've been having with the intervenors  
13       about the alternatives.

14               We have schematics, we have visuals, we  
15       have drawings of what such a project would look  
16       like. So, we're a fair amount of way along in  
17       doing that.

18               But I just want to put a caveat to make  
19       sure we're being perfectly clear, our ability to  
20       do that is dependent upon being able to negotiate  
21       an acceptable arrangement with the City for the  
22       gray water.

23               HEARING OFFICER VALKOSKY: Understood.  
24       The last couple points. Specifically how do you  
25       suggest, what role do you suggest the Committee



1 play in bringing the parties together? Basically  
2 the City and the applicant, in discussing a viable  
3 alternative?

4 MR. CARROLL: What I would suggest, and  
5 I confess that I haven't researched your authority  
6 to be able to do this, and your own counsel would  
7 have to tell you whether or not you can, but what  
8 I would suggest is that you direct the City and  
9 Mirant to hold meetings on a periodic basis. And  
10 I think short periods of time, weekly or every  
11 other week. To explore whether or not there's a  
12 viable alternative here to the cooling system.  
13 And to provide reports to this Committee on the  
14 status of those discussions.

15 And, again, I would couple that with the  
16 continuation of hearings on other topics. Because  
17 I think the parties need to understand and  
18 appreciate that things are moving forward here to  
19 provide them some impetus to have those  
20 discussions on the alternative cooling system.

21 CHAIRMAN KEESE: Do we need to do that  
22 if there -- I mean it seems there's already a  
23 meeting set --

24 MR. CARROLL: There is.

25 CHAIRMAN KEESE: -- on November 5th, so

1 we really don't have to order that meeting to be  
2 held.

3 MR. CARROLL: No, you don't have to  
4 order that --

5 CHAIRMAN KEESE: If the parties are  
6 going to be there. I think the fact that we're  
7 here suggests that we'd sure like the parties to  
8 get together. The fact that we recognize,  
9 everybody here recognizes that the City is  
10 absolutely indispensable to the current idea of a  
11 power plant there.

12 MR. CARROLL: It may not be necessary.  
13 And I am hopeful that this meeting the 5th will be  
14 the first in a series of meetings after which we  
15 will be able to say we have an agreement or we  
16 don't.

17 CHAIRMAN KEESE: Um-hum.

18 MR. CARROLL: But at least we'll  
19 understand where we are.

20 CHAIRMAN KEESE: Well, I'm uncomfortable  
21 with the -- as a general rule -- with the  
22 Commission telling either side to a negotiation  
23 that they've got to sit down at the negotiating  
24 table. I'm comfortable with suggesting that we  
25 sure hope both sides sit down. But to be

1       perceived as pushing one or the other is not a  
2       position I like to see the Commission going into.

3               HEARING OFFICER VALKOSKY:  Okay, and  
4       lastly, don't you see a conflict or a potential  
5       conflict between continuing with adversarial  
6       evidentiary hearings and attempting to negotiate a  
7       mutually acceptable agreement?

8               MR. CARROLL:  Not if the evidentiary  
9       hearings are focused on topics not substantially  
10      affected by the cooling system.  I mean I think if  
11      we had proposed a cooling system that everyone was  
12      happy with from the very beginning, we would still  
13      have our issues with respect to cultural resources  
14      and these other areas.

15              So I think that's inevitable, and I  
16      don't see those as being inconsistent with each  
17      other.

18              PRESIDING MEMBER PERNELL:  I have  
19      another question, I guess, for the City.  Do you  
20      have -- there's a recommendation to continue or  
21      suspend, whatever terminology you use.  Do you  
22      have a length of time for that?

23              MS. MINOR:  Commissioner Pernell, in my  
24      comments I suggested that we continue to a date  
25      certain subject to the fact that a license

1 agreement be reached by that date.

2 And so the way that that would occur is  
3 we would recommend that you continue this  
4 proceeding to three, four months, call it a status  
5 conference. And at that point you bring all the  
6 parties back in to get a clear indication of where  
7 the parties stand with respect, in this case, to  
8 the license agreement. And could also amend that  
9 to say the status of discussions as it relates to  
10 hybrid cooling.

11 PRESIDING MEMBER PERNELL: So your  
12 recommendation on your motion would be for two or  
13 three months? I mean you say date certain, so I'm  
14 trying to -- is there a recommendation for what  
15 the date certain is?

16 MS. MINOR: Yes, sir. I would pick  
17 three months from today. That would be the date  
18 certain for a status conference, making it clear  
19 to Mirant that this Committee expects to see  
20 either a license agreement with the Port, or  
21 substantial progress on a hybrid cooling agreement  
22 with the City in order to proceed with these  
23 hearings.

24 PRESIDING MEMBER PERNELL: Mr. Ramo,  
25 same question.

1           MR. RAMO: I think that's the way to go;  
2 I'm fine with that.

3           CHAIRMAN KEESE: Or what you suggested  
4 earlier, which is that Mirant come up with a  
5 proposal under which they can do it without any  
6 City approval?

7           MR. RAMO: I think that alternative  
8 would also be fine. It seems to me either they  
9 have to say we have site control for the once-  
10 through cooling; we have a gray water agreement;  
11 or we have a new design that does not require City  
12 agreement.

13          PRESIDING MEMBER PERNELL: Can we go off  
14 the record a minute, please.

15          (Off the record.)

16          HEARING OFFICER VALKOSKY: Well, the  
17 Committee has -- I'm sorry, Ms. London.

18          MS. LONDON: Excuse me, Your Honor,  
19 Commissioner Pernell. I'm sorry that I'm late --

20          PRESIDING MEMBER PERNELL: Could you go  
21 to the mike, please?

22          MS. LONDON: Oh, sure.

23          PRESIDING MEMBER PERNELL: Identify  
24 yourself for the record.

25          MS. LONDON: Excuse me, I'm sorry to

1 interrupt. I'm Jody London and I just wanted to  
2 let you know that on behalf of the Neighboring  
3 Property Owners Coalition I am here.

4 We did file a motion in support of the  
5 motion filed by the City and County of San  
6 Francisco.

7 And I just wanted to let you know that  
8 we're here in attendance and we still stand on  
9 what we filed earlier.

10 PRESIDING MEMBER PERNELL: Do you have a  
11 recommendation on the time? The Committee has  
12 received two recommendations of approximately  
13 three months.

14 MS. LONDON: I don't have an opinion  
15 either way. I would really rely on the City and  
16 the assumptions that they're making about when  
17 certain things will happen in terms of the timing.  
18 But we do think that to continue at this point  
19 would not be the most useful way to proceed in  
20 this instance.

21 PRESIDING MEMBER PERNELL: All right,  
22 thank you.

23 We're off the record again, please.

24 (Off the record.)

25 HEARING OFFICER VALKOSKY: I'd like to

1 take public comment on the motion. I have a card  
2 from Mr. Michael Strausz. Approach the  
3 microphone, please. Sir, please identify yourself  
4 and spell your last name for the record.

5 MR. STRAUSZ: Michael Strausz,  
6 S-t-r-a-u-s-z. I think one of the reasons you  
7 haven't seen the people regarding environmental  
8 justice lately at these hearings is that most of  
9 the people who had that issue and were concerned  
10 about the shutdown of the Hunter's Point Plant  
11 feel fairly confident the direction the City's  
12 going with their new energy resource plan.

13 And the energy resource plan, when it  
14 first came out in draft form in the spring,  
15 actually included the Mirant 7 application as a  
16 viable alternative. And when they brought it out  
17 to the people it turned out that the people didn't  
18 think that was viable at all.

19 And as it came out in the final form,  
20 not only was the Mirant 7 completely out of the  
21 plan as an alternative, but they did what many  
22 people were suggesting, they called for the  
23 shutdown from 2005 to 2010 of the Mirant 3 plant  
24 at Potrero.

25 And one of the things I guess Mr. Lynch

1       said is, is this plan public policy. Right now it  
2       isn't. But about a month and a half ago they did  
3       have the Committee meeting that started off the  
4       process to make an ordinance out of, and make law  
5       out of, an official policy out of the energy  
6       resource plan.

7               And I think that probably, we're certain  
8       it's going to have -- it's going into effect most  
9       likely in the present form, and it will probably  
10      happen in January or February. I think probably  
11      four months is better than three months, because  
12      the holidays, going to lose a full month and a  
13      half of time where the supervisors can actually  
14      act.

15             But the whole --

16             PRESIDING MEMBER PERNELL: They don't  
17      work the whole month during the holidays?

18             MR. STRAUZ: I don't know what they're  
19      doing, but that's what happens during that period.

20             The whole idea that people are saying,  
21      well, if it's going to be a water-through  
22      treatment or a hybrid treatment, or even a dry-  
23      cool treatment plant, that's not the issue here.  
24      The issue here is whether the City needs this  
25      plant. And I know you've questioned whether the



1 Hunter's Point Plant can even be shut down without  
2 a plant like this coming online.

3 There is a -- it's not proposed, but a  
4 planned -- approved by the ISO, soon to be  
5 approved by the PUC, transmission line upgrade  
6 coming from the Peninsula that's going to add 350  
7 megawatts. There is a proposed and probably soon  
8 to be approved plan to upgrade the east side  
9 transmission lines, add another 150 megawatts.

10 The plan, itself, calls for adding about  
11 150 megawatts of City-controlled peaker plants  
12 that would turn on only when necessary. Somewhere  
13 down on the central waterfront just where they are  
14 now, and hidden behind buildings so that they  
15 wouldn't disturb anybody. And they would turn on  
16 very seldom.

17 We've talked about an additional 100  
18 megawatts of power in areas that the City has  
19 influence, such as at Mission Bay and at a steam  
20 plant that's already downtown.

21 If the plan was in effect, was City  
22 policy, I think that would have a great impact on  
23 how you'd finally decide here. And there really  
24 would be no point in going forward with the Mirant  
25 application.

1 Thank you very much.

2 PRESIDING MEMBER PERNELL: Thank you.

3 CHAIRMAN KEESE: Thank you.

4 PRESIDING MEMBER PERNELL: Let me just  
5 say that I wasn't questioning where the residents  
6 of Potrero Hill was, I was questioning the, in  
7 this case, the intervenor mentioning a lack  
8 thereof of environmental justice.

9 MR. STRAUZ: Oh, I see. Okay, thank  
10 you.

11 PRESIDING MEMBER PERNELL: All right.

12 HEARING OFFICER VALKOSKY: On behalf of  
13 the Committee, the Committee will be taking this  
14 item under submission. But there are two things,  
15 three things actually, the Committee wants to be  
16 clear on.

17 First we will have tomorrow's hearing on  
18 reliability and associated matters.

19 Two, we would direct the City and the  
20 applicant to provide all parties a written report  
21 on the November 5th meeting. If you could provide  
22 that report/summary/indication a week later, that  
23 is by November 12th. I believe that would assist  
24 the Committee.

25 And three, so the Committee has a better

1 understanding of what is actually involved,  
2 tomorrow we'd like to entertain a procedural  
3 discussion on any topics which are unrelated to  
4 cooling and which hearings could be held. Not  
5 doing this for any reason other than to get the  
6 information before the Committee.

7 If everyone has their pens and pencils,  
8 the topics that I have that we have not heard yet  
9 are the continuation of cultural resources; again,  
10 excluding tomorrow's hearing, we have air quality  
11 topic; the public health topic; the noise topic;  
12 socioeconomic resources, which would include  
13 environmental justice; the local systems effects  
14 topic; the facility design topic, which includes a  
15 continuation of matters put over from hazardous  
16 materials; the visual resources topic; water and  
17 soils, which includes certain waste management  
18 measures identified in previous hearings; and  
19 finally, the aquatic biology and cooling options  
20 topic.

21 I'd like to have that discussion  
22 tomorrow, preferably, unless there's reason not  
23 to, preferably at the conclusion of the  
24 evidentiary presentation.

25 Any questions? Ms. Minor.

1 MS. MINOR: Not to drag this out  
2 indefinitely, Mr. Hearing Officer, a number of  
3 questions have been raised and since the Committee  
4 is going to take under advisement this motion, I  
5 think it may benefit the Committee if the City  
6 commented, or if there were any more specific  
7 questions directed at the City, to a number of the  
8 points that have been raised.

9 I have made a note about some of those  
10 comments, and I don't want to prolong this  
11 unnecessarily, but at the same time a number of  
12 comments that have been raised that maybe should  
13 be addressed.

14 HEARING OFFICER VALKOSKY: Okay, I think  
15 I'd like to limit this, since everyone agrees it  
16 is you and the applicant -- you, personally, the  
17 City, your client and the applicant that are  
18 involved I think that could be productive. Also  
19 I'd like to give applicant a chance to address any  
20 comments that you may raise in this. And then I  
21 think we can move on.

22 MR. CARROLL: I'm sorry, I'm not clear.  
23 So then the proposal --

24 HEARING OFFICER VALKOSKY: This is kind  
25 of a -- basically we're talking about the City's

1 rebuttal to your comments. And you get a chance  
2 to --

3 PRESIDING MEMBER PERNELL: Or to mine.

4 HEARING OFFICER VALKOSKY: Right.

5 MR. CARROLL: Right, that's what I  
6 understood it to be. But what I'm not clear on,  
7 are we going to do that in writing according to  
8 some schedule? Or are --

9 HEARING OFFICER VALKOSKY: No, I think  
10 we could do it right now, unless -- does it pose  
11 you a difficulty?

12 MS. MINOR: Right.

13 MR. CARROLL: Oh, okay, okay.

14 HEARING OFFICER VALKOSKY: No.

15 MS. MINOR: Thank you. And I'll try to  
16 make this brief and relatively quickly.

17 Commissioner Pernell has certainly  
18 expressed concern about environmental justice.  
19 The City continues to be very concerned about this  
20 topic.

21 Commissioner Pernell, I think the reason  
22 that over the last few hearing dates you have not  
23 seen focus on this topic, it's because it's one of  
24 the topics that we elected to defer until later in  
25 the hearing.

1           The City has a designated witness. We  
2       expect to put on an active case, because the  
3       environmental justice concerns are paramount in  
4       the minds of the community that's directly  
5       affected by this power plant.

6           I would like to address --

7           PRESIDING MEMBER PERNELL: I know that  
8       Supervisor Maxwell was concerned about that, as  
9       well.

10          MS. MINOR: Exactly.

11          PRESIDING MEMBER PERNELL: Yes.

12          MS. MINOR: And it is addressed in the  
13       City ordinance that was passed in May 2001.

14          Briefly, to address the action on the  
15       part of Mirant in withdrawing the modification to  
16       the FDOC.

17          Mirant represents, through its counsel,  
18       that its proposed modification would have reduced  
19       some air pollutions by 40 percent. And it  
20       believes that withdrawing that application will  
21       somehow have a constructive beneficial effect on  
22       the movement of this case.

23          But it's certainly one of the issues  
24       that the policymakers in San Francisco will have  
25       to take into consideration as it plans for

1 negotiations with Mirant. I mean effectively  
2 Mirant has said that we are withdrawing a  
3 modification that we think would have a beneficial  
4 effect on health and safety of the citizens,  
5 particularly in southeast San Francisco. As you  
6 can imagine, the City is concerned about that.

7 There has been an inference that the San  
8 Francisco City Attorney's Office somehow  
9 personally has not responded to the draft license  
10 agreement submitted by Mirant. As you know, the  
11 City Attorney's Office, legal counsel for the City  
12 and County of San Francisco, like Mr. Carroll, we  
13 have clients and we're taking our direction from  
14 our clients. This is not a decision that's been  
15 made by the City Attorney's Office in San  
16 Francisco. It is a decision that's made by the  
17 City Attorney's Office.

18 The draft license agreement that is in  
19 our files submitted by Mirant is subject to the  
20 Public Records Act, and if any party would like to  
21 see a copy of that license agreement, the draft  
22 license agreement submitted by Mirant, we will  
23 definitely make a copy of it available to you.

24 PRESIDING MEMBER PERNELL: Well, the  
25 Committee would like to see that. The draft

1 license agreement, you say it's a public document  
2 and you can make a copy available?

3 MS. MINOR: I certainly can. And if  
4 you'd like me to docket it --

5 PRESIDING MEMBER PERNELL: Does Mr.  
6 Carroll --

7 MS. MINOR: -- I will.

8 PRESIDING MEMBER PERNELL: Does the  
9 applicant have any problem with that?

10 MR. CARROLL: No, we don't. And Ms.  
11 Minor raises a good point. Once we submitted it  
12 to the City it became public anyway. That's fine.

13 HEARING OFFICER VALKOSKY: Yeah, Ms.  
14 Minor, if you could submit that to the docket  
15 within the next week?

16 MS. MINOR: I certainly will.

17 And I guess I just -- I want to conclude  
18 by saying that the City is -- we've got two issues  
19 here. We have a pending proposal that requires a  
20 license with the City and County of San Francisco.  
21 And we have a discussions about a hybrid cooling  
22 that will also require agreement with the City and  
23 County of San Francisco.

24 Mirant seems to agree with all the  
25 positions taken by the intervenors today, and that



1 is that it has no agreement with the City and  
2 County of San Francisco.

3 PRESIDING MEMBER PERNELL: I think we  
4 all agree with that.

5 MS. MINOR: And to move this forward is  
6 going to require good faith and cooperation,  
7 taking into account all the issues and all of the  
8 concerns. And the City's prepared to talk to  
9 Mirant, but we do strongly believe that we are  
10 wasting public resources talking about a project  
11 here that requires an agreement that Mirant does  
12 not have.

13 And the recent precedence in San  
14 Francisco and the difficulty in getting leases and  
15 license agreements from the Port to build power  
16 plants strongly suggests that this Committee  
17 should require this applicant to get the license  
18 agreement and then proceed with the evidentiary  
19 hearings.

20 PRESIDING MEMBER PERNELL: Right. Now  
21 what happens if they can't do that?

22 MS. MINOR: Then based on the design  
23 that they have, they can't build a power plant.

24 PRESIDING MEMBER PERNELL: And so you're  
25 not suggesting that's the object?

1 MS. MINOR: Suggesting that what is the  
2 object?

3 PRESIDING MEMBER PERNELL: That if they  
4 can't get an agreement -- what I hear you saying  
5 is that this Committee should say, before we move  
6 forward that you have an agreement with the Port  
7 of San Francisco.

8 MS. MINOR: Um-hum.

9 PRESIDING MEMBER PERNELL: If, for some  
10 reason, a date certain they don't have that  
11 agreement, then the project can't move forward.

12 MS. MINOR: That's correct.

13 PRESIDING MEMBER PERNELL: Is that --  
14 right. So, okay, I think i understand that.

15 HEARING OFFICER VALKOSKY: Ms. Minor, is  
16 it fair to characterize the City as welcoming  
17 applicant's willingness to discuss alternatives,  
18 specifically hybrid cooling technologies?

19 MS. MINOR: The letter that Mirant  
20 received setting up the November 5th meeting  
21 indicates that the Public Utilities Commission was  
22 directed by the Mayor of San Francisco to contact  
23 Mirant to meet with it.

24 And so those meetings will go forward.  
25 The City has designated a single point of contact

1 in the Public Utilities Commission for Mirant to  
2 discuss all issues related to hybrid cooling.  
3 That person obviously will be at the meeting on  
4 November 5th.

5 HEARING OFFICER VALKOSKY: Okay, thank  
6 you. Is that it?

7 MS. MINOR: Yes.

8 HEARING OFFICER VALKOSKY: Mr. Carroll,  
9 anything to add?

10 MR. CARROLL: I would simply add that I  
11 think there is a great amount of overlap between  
12 the objectives of all parties sitting at the table  
13 here in terms of shutting down Hunter's Point, and  
14 some of the other broader policy objectives that  
15 have been talked about.

16 Where we part ways significantly is on  
17 the path to achieving those objectives. And we  
18 firmly believe that those objectives cannot be  
19 achieved without a project like unit 7. That  
20 doesn't mean that the City doesn't move forward  
21 with renewables, it doesn't move forward with its  
22 bold objectives on solar, it doesn't move forward  
23 on conservation. We think all of those are great  
24 things.

25 But, we do not think that the

1 fundamental policy objectives that everybody talks  
2 about can be achieved without a large baseload  
3 reliability plant in the City of San Francisco.

4 And so I think that notwithstanding the  
5 difficulties we've been having, we have a lot of  
6 unity in our objectives. And I would hope that,  
7 as I said earlier, this meeting on November 5th is  
8 the beginning of the last series of meetings in  
9 coming together in some way to accomplish those  
10 objectives.

11 HEARING OFFICER VALKOSKY: Thank you.  
12 We'll look forward to your summary on the 12th to  
13 find out how much progress is being made.

14 MR. RATLIFF: Mr. Valkosky, if I may?

15 HEARING OFFICER VALKOSKY: Certainly,  
16 Mr. Ratliff.

17 MR. RATLIFF: Following up on the  
18 suggestion from the City of San Francisco, it  
19 sounds to me like no one, none of the parties  
20 today have anything but support for the amendment  
21 to the FDOC, which would place more stringent  
22 limitations on air emissions that was the subject  
23 of the filing that originally had been made with  
24 the Air District.

25 I would hope that maybe the parties

1       could agree or stipulate that that should go  
2       forward, and should not delay proceeding in and of  
3       itself, except for in the issue of air quality  
4       until that amendment has been processed.  Whatever  
5       the -- I mean, just as a separate matter from all  
6       the rest of it.

7               HEARING OFFICER VALKOSKY:  So, are you  
8       basically saying that you're asking if the City  
9       and County will remove that as a basis for their  
10      motion, and then I guess the second step would be  
11      that applicant would withdraw its withdrawal of  
12      the --

13             MR. RATLIFF:  Well, I would hope that  
14      they would renew their application to try to amend  
15      the FDOC to impose a more stringent air  
16      limitations -- I think everyone's in support of  
17      that substantively.  And I would like to see that  
18      as an issue that's independent of your overall  
19      ruling on whether or not there's going to be --

20             HEARING OFFICER VALKOSKY:  No,  
21      understood.  Ms. Minor, Mr. Carroll, do you  
22      understand Mr. Ratliff's suggestion?

23             MS. MINOR:  I do, and I think it's an  
24      excellent suggestion.  But I believe that it's not  
25      that the City's required to remove that as one of

1 the bases for its motion. But that Mirant should  
2 refile its amendment with the Air District and  
3 proceed with handling that amendment before the  
4 Air District. It seems to me that that's the  
5 appropriate course of action.

6 HEARING OFFICER VALKOSKY: Right, but I  
7 think the question Mr. Ratliff -- implicit in the  
8 question -- suggestion, excuse me, that Mr.  
9 Ratliff was making is that if that happens that  
10 would not necessarily be a reason for delaying  
11 hearings at all, because that would be considered,  
12 the whole matter of the FDOC and any amendments  
13 thereto will be considered in the air quality  
14 hearings.

15 MS. MINOR: That's right, and we see  
16 that there would be parallel tracks. At the Air  
17 District, the Air District would be handling the  
18 request for modification to the FDOC. And this  
19 proceeding would continue.

20 Where the City objected was that Mirant  
21 contacted the Air District and asked for an  
22 indefinite suspension of the Air District's action  
23 on its modification.

24 HEARING OFFICER VALKOSKY: But --

25 MS. MINOR: That, we thought, was

1 inappropriate.

2 HEARING OFFICER VALKOSKY: But I guess,  
3 see, from the Committee's point of view, the real  
4 effect of that is that hearings on air quality  
5 would be delayed until the Air District took  
6 whatever action it's taking.

7 So, you know, regardless of Mirant's  
8 indefinite suspension or not, the fact is, at  
9 least in the Committee's assessment, we couldn't  
10 proceed on air quality until we had all that stuff  
11 available.

12 That's different in my mind, and I think  
13 it's the point that Mr. Ratliff is making, from  
14 not having any hearings. Okay?

15 Now, I'd like to address that topic  
16 tomorrow in the discussion about the topics not  
17 affected by the cooling option. Okay, give  
18 everybody time to think it over. Okay?

19 Any further comment from the public on  
20 the matter of the motion?

21 Okay, there is not.

22 PRESIDING MEMBER PERNELL: All right, we  
23 will continue tomorrow at 10:00 a.m. And  
24 Commissioner Keese will try and be on time.

25 (Laughter.)

1           PRESIDING MEMBER PERNELL:  The meeting's  
2   adjourned.

3           (Whereupon, at 3:29 p.m., the hearing  
4   was adjourned, to reconvene at 10:00  
5   a.m., Tuesday, October 29, 2002, at this  
6   same location.)

7                       --o0o--



## CERTIFICATE OF REPORTER

I, JAMES A. RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of November, 2002.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345